DRN-5520646

The complaint

Mr G complains that Kensington Mortgage Company Limited wouldn't offer him a new fixed interest rate product on his mortgage.

What happened

Mr G took out his mortgage with Money Partners Limited in 2006. He borrowed around £80,000 on an interest-only basis over a term of 25 years. The interest rate was fixed at 5.99% until 31 May 2009. A variable interest rate plus a fixed margin of 2% then applied for the rest of the term. The mortgage was later transferred to Kensington and then to another lender in early 2022.

In 2023 Mr G made a complaint to his current mortgage lender and then to Kensington. He said that he's now a "mortgage prisoner" because his current lender doesn't offer new interest rate products, and Kensington should have made a fixed rate product available to him. He said he met Kensington's eligibility criteria for a new fixed rate and he was refused a rate simply because he has an older mortgage. He asked for a fixed rate that was available in September 2021, when Kensington wrote to him about a change to the variable rate on his mortgage, to be applied and backdated.

Kensington said it had no record of Mr G asking for a new interest rate product. It said it wrote to him in September 2021 notifying him that LIBOR was coming to an end later that year and explaining what that would mean for his mortgage interest rate – but that was the only contact it had with him at around that time. It said it had also written to Mr G in October 2020 letting him know that he may be able to switch to a cheaper mortgage with another lender, but it didn't have any products available to him at the time.

Mr G asked us to look into his complaint. He said he knew that Kensington did have new interest rate products available in October 2020 and it had treated him very unfairly in not offering them to him.

Our Investigator recommended that the complaint should be upheld. He said Kensington should apply and backdate a fixed rate to September 2020, refund any overpayments plus interest, and pay Mr G £300 compensation.

Mr G didn't say whether or not he accepted that conclusion, but Kensington did not accept it. It said that, based on the 2006 valuation of Mr G's property and a widely used house price index, his loan to value (LTV) ratio in September 2020 was 81.3%. It said the maximum LTV it would accept when offering new products to existing borrowers at that time was 80% - so it didn't have a product available to Mr G. It also said it had suggested Mr G take advice in its October 2020 letter.

The complaint was referred to me and I issued a provisional decision.

My provisional decision

I said:

“I think this complaint should be upheld. I consider that Kensington misled Mr G when it wrote to him in 2020 saying it couldn’t offer him a new interest rate product. It did have new rates available to existing borrowers at the time, and I think Mr G should fairly have had the option of taking one if he wanted.

Lenders don’t have to offer new interest rate products to their customers. Where they do offer rates, it’s fair and reasonable – and standard practice in the mortgage industry – for them to have eligibility criteria. These criteria might mean that not all borrowers are offered the same rate, or that some are not offered a rate at all, based on things like LTV and arrears history for example.

Until 2017 Kensington didn’t offer new rates to its customers. It did then begin offering new fixed rates to some existing customers - but not all of them. In general, it was willing to offer new fixed rates (subject to other criteria such as LTV and arrears history as I’ve mentioned above) to customers whose mortgages were taken out since 2010, but not to customers who took out their mortgages earlier.

This is because Kensington securitises its mortgages. This means it offers the beneficial interest in groups of loans to third party investors to raise funds for its ongoing mortgage business. 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.

However, the Financial Ombudsman Service has in other cases taken the view that it may be unfair for customers to be refused a new rate because of the terms of the securitisations, and where the customer can’t move their mortgage to another lender or shop around for a better rate - subject to the facts of the individual case. Mr G took out his mortgage in 2006, so I think it likely that his mortgage was securitised. I also think he’s likely to have had difficulty moving his mortgage to another lender if he tried to do so, given that he has an interest-only mortgage with no repayment strategy and given what he has said about his financial situation. This meant he had no option but to keep his mortgage with Kensington.

Before 2017, when Kensington had no rates available at all, Mr G was in the same position as all other customers. Kensington didn’t offer new rates to any of its customers and it wasn’t obliged to do so, and so it wasn’t unfair that no rates were available to Mr G. However, when Kensington wrote to Mr G in October 2020 and told him it couldn’t offer him a new mortgage product, things had changed. By then, Kensington did offer rates to some new customers. So I need to decide whether it was fair that it still didn’t make any of those rates available to Mr G.

In thinking about this, I’ve taken into account the rules of mortgage regulation, which are set out in the Financial Conduct Authority (FCA) Handbook under the heading MCOB. In particular, MCOB 11.8.1 E (the E means it’s an evidential provision, not a rule) says that where a borrower is unable to move their mortgage to a new lender (as Mr G was), their existing lender:

> “should not (for example, by offering less favourable interest rates or other terms) take advantage of the customer’s situation or treat the customer any less favourably than it would treat other customers with similar characteristics. To do so may be relied on as tending to show contravention of Principle 6 (Customer’s interests).”

Principle 6 is another part of the FCA Handbook, and says that a firm:

> “must pay due regard to the interests of its customers and treat them fairly.”

As MCOB 11.8.1 E is an evidential provision, it means that conduct of the sort set out in the provision might show unfairness in some circumstances – but equally in other circumstances it might not. In my view, the provision is aimed at ensuring that borrowers who can't shop around for a better deal are not taken advantage of and treated less favourably than other borrowers who can do so.

Kensington hasn't told us why it wrote to Mr G telling him it couldn't offer him a new rate in October 2020. But when it sent him that letter, I'm aware that it would offer a new interest rate to a customer whose loan was taken out after 2010 and who met other criteria it had set. Those other criteria included that the mortgage was not in arrears and hadn't recently been in arrears. Mr G's mortgage was up to date and had been up to date in recent years and I'm satisfied that Mr G wouldn't have been able to move the mortgage to another lender so, subject to it meeting other relevant criteria such as LTV - which I'll come back to later - I think Mr G should have been eligible for the same interest rate products as borrowers who took out their mortgages after 2010.

Kensington wasn't required to proactively invite Mr G to apply for a new interest rate product, either under the rules of mortgage regulation or as a matter of good industry practice. I would only expect it to have offered him a new rate if he asked for one, and I'm not persuaded that he did. There's no record of such a request in Kensington's records and Mr G's recollections about this haven't been consistent. However, Mr G has said that the letter Kensington sent him in October 2020 made him think there was no point asking it for a new interest rate, because it said there wasn't one available to him. And he has said that he didn't look elsewhere for a new deal because he didn't think he would pass a new lender's affordability checks.

I can see why Mr G didn't apply for a new rate in the circumstances and, in particular, why he didn't ask Kensington for one. Kensington had told him he couldn't have one. If Mr G's LTV was the reason Kensington wrote to him in October 2020 telling him he couldn't have a new rate then I think it should have said so in its letter, so that Mr G would have known to review his position if the value of his property increased or if he repaid a small amount of the capital mortgage balance. If however the reason Kensington wrote to Mr G in October 2020 was because it had securitised his mortgage then I don't think that was a fair reason not to offer him a new rate bearing in mind MCOB 11.8.1 E. Whatever the reason for the October 2020 letter, I don't think Kensington treated Mr G fairly and reasonably in telling him he couldn't have a new interest rate product under any circumstances.

Had it treated him fairly, Kensington wouldn't have told Mr G it couldn't offer him a new rate. Mr G wouldn't then have understood there was no value in asking it for one, and I think he should therefore now fairly have the option of taking an interest rate product for which he would have been eligible soon after Kensington's October 2020 letter.

Our Investigator asked Kensington to provide details of the fixed interest rate products Kensington had available to existing customers in September 2020. Kensington said the maximum LTV it would accept for a product switch application from an existing borrower was 80% at that time, and Mr G's LTV was 81.3%. On that basis, it said it wouldn't have offered him a fixed interest rate product.

However, I don't think that September 2020 was the right month to look at in deciding how to put right the unfairness in this case. Kensington wrote to Mr G telling him he couldn't have a new rate in October 2020. I think that relevant rates and the relevant LTV are therefore those in November 2020 - by that time, Mr G would have had time to contact Kensington and/or a broker and ask for a rate switch had Kensington not told him he couldn't have one. Allowing time for an application, a new interest rate product might then reasonably have been in place to start on 1 January 2021.

Mr G has provided a list of fixed rate products Kensington had available to new customers in November 2020. They include a two-year and a five-year fixed rate up to 85% LTV (4.49% and 4.99% respectively, both with no fee).

I've looked at the fixed interest rate products listed for Kensington in the December 2020 edition of Moneyfacts, which publishes details of rates available from lenders. The December 2020 issue is based on data for the preceding month (November 2020) and lists the various interest rate products Kensington had on offer at that time. Only one of them was available for mortgages up to 85% LTV - that was a rate of 4.29% fixed for two years, with no fee. I'm aware from other cases that Kensington offered new fixed rates to other existing customers, not just to new customers, at this LTV around this time too.

On this basis it seems likely that Kensington also had fixed rate products available up to 85% LTV to existing customers in November 2020. I think that Mr G is likely to have applied for one of those rates had Kensington not told him he couldn't do so, and I think that, acting fairly and reasonably, Kensington should have approved such an application.

Putting things right

To put things right, I find that Kensington should put Mr G in the position he would have been in if it had offered him a rate in November 2020. Allowing time for an application to be made and processed, it should re-calculate interest on his mortgage as if a new interest rate product had been in place from 1 January 2021.

Kensington should provide a list of the rates it had available to existing customers in November 2020 in response to this provisional decision. If it didn't have any 85% LTV products available for any existing customers at any time in November 2020, it should provide details of the earliest date after November 2020 when it did offer 85% LTV products for existing customers, and details of those rates.

If Kensington doesn't provide that information, I'll proceed on the basis that Mr G would have applied for and been granted the 4.29% fixed rate product I've identified in Moneyfacts as set out above. Mr G may wish to check what rate he actually paid on his mortgage during the resulting fixed rate period as it may be that he paid interest at a lower rate for some or all of that time. If that's the case, any saving would be offset from compensation for periods when he was paying a higher interest rate.

I propose to require Kensington to re-calculate Mr G's mortgage on the basis of the lowest of the available fixed rates he would have been able to apply for in November 2020, on the basis that this fixed rate was put in place on 1 January 2021, treating any payments he has made on a higher variable rate as overpayments.

This is complicated by the fact that Kensington no longer owns Mr G's mortgage. If the rate Mr G selects is a two-year rate, which would have ended in January 2023, Kensington can calculate the amount, if any, he has overpaid between January 2021 and January 2023 and refund that amount to him directly.

But if Mr G selects a rate for a longer period, which would still be in place now, as well as refunding what he has overpaid to him directly, Kensington will need to ensure that he doesn't pay more than he should for the remainder of the fixed rate period. It can do this either by coming to an arrangement with the new lender – under which the new lender agrees to reduce the interest rate to the fixed rate Mr G selects, or under which the mortgage is returned to Kensington so it can change the interest rate. Alternatively, Kensington could compensate Mr G for the additional amount he will pay to the new lender each month until the end of the fixed rate term.

Kensington should then refund any overpayments to Mr G, plus interest at an annual rate of 8% simple from the date of each payment to the date of refund.

I also propose to require Kensington to pay Mr G £300 compensation, to reflect the impact on him of having been misled into understanding he had to remain on a variable interest rate and had no other options available to him."

I invited Mr G and Kensington to let me have any further evidence or arguments they wanted me to consider before I made my final decision.

Mr G accepted my provisional decision. He asked for an assurance that Kensington would be honest when providing details of its interest rate products. He also said he'd like a longer term fixed interest rate product, for five to ten years.

Kensington didn't say whether or not it accepted my provisional decision, but it had nothing further to add.

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've also reconsidered what I said in my provisional decision and considered Mr G's further comments, as well as Kensington's decision not to provide details of relevant interest rate products from November 2020. Having done so, I've reached the same conclusion I came to in my provisional decision, for the same reasons.

I haven't seen anything to show that Kensington had a fixed interest rate product available in November 2020 for longer than two years for which Mr G – as an existing customer with an LTV of more than 80% – would have been eligible. On that basis I consider that a fair and reasonable outcome in all the circumstances of this complaint is to require Kensington to rework Mr G's mortgage as if he had taken the 4.29% two-year fixed rate with no fee, as I proposed to do in my provisional decision if no other rate information were made available.

That means the two-year rate would have expired in around November 2022, after which the mortgage would have reverted to the standard variable rate associated with the fixed rate. By then Mr G's mortgage had transferred to a new lender. It's the new lender which is responsible for the fairness of interest charged from then on – including whether or not it chooses to make further fixed rates available to Mr G.

Mr G may wish to check what rate he actually paid on his mortgage during the resulting fixed rate period as it may be that he paid interest at a lower rate for some or all of that time. If that's the case, any saving would be offset from compensation for periods when he was paying a higher interest rate.

My final decision

My final decision is that I uphold this complaint. In full and final settlement, Kensington Mortgage Company Limited must:

- Re-calculate interest on Mr G's mortgage as if a two-year fixed interest rate product of 4.29% with no product or arrangement fee had been in place from 1 January 2021, treating any payments Mr G has made on a higher variable rate as overpayments, including during the period of the fixed rate that the mortgage has been with a new lender. Any saving for periods when Mr G was paying a lower interest rate – if he was – may be offset from the total of these overpayments.

- Refund any resulting overpayments to Mr G, plus interest at an annual rate of 8% simple from the date of each overpayment to the date of refund.

- Pay Mr G £300 compensation.

Kensington must pay the compensation within 28 days of the date on which we tell it Mr G accepts my final decision, if he does accept it. If it pays later than this it must also pay interest on the compensation – including on my award of £300 for non-financial loss – from the deadline date for settlement to the date of payment at 8% a year simple.

If Kensington deducts income tax from the 8% interest element of my award, it should tell Mr G how much it has taken off. It should also give Mr G a tax deduction certificate if he asks for one, so that he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 June 2025.

Janet Millington
Ombudsman