

## **The complaint**

Mr and Mrs G's complaint relates to a mortgage Mr G has with Kensington Mortgage Company Limited trading as Kensington Mortgages:

- They are unhappy that Kensington will not agree to Mrs G being added to the mortgage due to her residency status.
- Kensington did not tell Mr G about contact from the Child Maintenance Service (CMS) at the time it was received. He considers this meant that he could not deal with the situation and was, therefore, unable to re-mortgage to another lender.
- Kensington took advantage of the CMS situation and offered him interest rate options that were higher than he could have had with other lenders.

While Mrs G has joined the complaint, Mr G has been the primary contact with both Kensington and this Service, which is reflected below.

## **What happened**

Mr G took out his mortgage in July 2022. The mortgage was for just over £200,000, including fees, on a repayment basis over 23 years. A fixed interest rate product was attached to the mortgage which would expire after 24 months. It was confirmed that after that the mortgage would revert to being charged at 4.8% above the 'Kensington Standard Rate', which was a variable rate of interest.

On 20 October 2023 Kensington was notified by the CMS that it had obtained an interim charging order on the property that the mortgage was secured on due to legal action it was taking. It said that there would be a hearing, and the court would decide whether to make the charging order final or not. A copy of the interim order dated 6 October 2023 was provided.

In November 2023 Mr G asked Kensington about adding Mrs G to the mortgage. It said that would not be possible because the loan-to-value (LTV) ratio associated with the mortgage was too high. Mr G disagreed with the desktop valuation Kensington used to determine the LTV – he believed the property was worth a lot more. He expressed his dissatisfaction with the situation and a complaint was set up.

Kensington considered the situation and confirmed that, having spoken to its underwriters, it would allow an application to add Mrs G to be progressed, but it could not guarantee that the application would be accepted. However, before that could happen, it needed confirmation that the interim charging order had been objected to. Mr G explained during a telephone conversation that the case was closed, and the court action was an attempt to pursue something that was out of date. He confirmed that the interim charging order had been objected to and said he would provide documentation evidencing the appeal. Kensington said that once the appeal was received it could consider an application further.

On 10 January 2024 Kensington formally responded to the complaint about the initial decision not to allow the application to proceed. It didn't uphold it as it said Mr G had been given correct information at the time. However, as had already been explained, given the

information Mr G had given about the interim charging order, an application could be considered. It confirmed that it had already sent Mr G the application pack.

The application form was returned in February 2024. Mr G was told that it would not be possible for Mrs G to be added to the mortgage as she did not have indefinite leave to remain in the UK. Mr G was not happy with this. Kensington confirmed again on 27 February that what he had been told was correct. It also said that its policy was in line with all legal and regulatory requirements.

On 4 April 2024 Kensington sent Mr G a text message telling him that he was eligible to switch his mortgage to a new interest rate product. It explained that if he was interested in doing so, he could make the switch online. A few weeks later Mr G informed Kensington that he had decided to re-mortgage in July, as he could get a lower differential, tracker product with another lender. Mr G also informed Kensington that the document it may have received from the CMS was not a binding court order and as such not enforceable. He said that the interim order should have no effect on the mortgage.

The following day Kensington confirmed when the early repayment charge associated with Mr G's then current interest rate product ended. It also told Mr G that it had not received any recent correspondence from the CMS. It followed that up with confirmation that if the CMS contacted it for information using the powers it legally had, it would need to provide the information requested. Mr G asked Kensington to ensure that if such a request was made, it was not breaching his rights when it responded. He suggested that he would take legal action against Kensington if he considered it had provided information it should not have done. Kensington reassured Mr G that it would pass any requests to its legal department before any response was provided, but at that time it had not received any requests from the CMS.

On 21 June 2024 Mr G contacted Kensington again. He questioned why the interest rate products that were available to him involved high interest rates. He alluded to Kensington not wanting to keep him as a customer. Kensington effectively said that the rates offered were in line with the wider market. Mr G expressed his disappointment at the response he received and the products available to him. He said that Kensington should let him know if it wanted to offer a better rate in order to keep him as a customer.

Kensington took Mr G's dissatisfaction as a complaint. Kensington sent its final response letter on 27 June 2024 - it didn't uphold the complaint.

In response Mr G confirmed that he had applied to another lender for a re-mortgage. He also said that he had not made a complaint, but rather an enquiry that he hoped would elicit a lower interest rate product in order to keep him as a customer.

There were further exchanges between Mr G and Kensington. These related to Kensington's policy on the residency status of its borrowers, Mr G's situation, what he wanted Kensington to agree to regarding the mortgage, and what Kensington required before it was able to establish if it could assist Mr G in his financial difficulties. During these exchanges Mr G made it clear that he could not afford to pay the higher mortgage payments, based on either the then current interest rate or any of the preferential products on offer, and that he wanted to move his mortgage away from Kensington. Kensington offered several times to look at whether it could offer Mr G any assistance if he was in financial difficulties, but he declined to complete the financial assessment that was needed.

On 17 September 2024 Kensington sent a final response letter regarding Mr G's concerns about the interest rate products available, not allowing Mrs G to be added to the mortgage,

and that it did not tell him about correspondence it had received from the CMS when it was received. The complaint was not upheld.

Mr G subsequently said he believed that Kensington was required to communicate to him material things that impacted the mortgage and his decisions relating to the risk in that regard. As such, he considered that Kensington should have contacted him as soon as the CMS had contacted it. Mr G said he had only been aware of this when he tried to re-mortgage to a different lender in May 2024. He said that he believed he could have averted the situation if he had been made aware of the situation by Kensington. There were further exchanges, but Kensington did not change its position. It did, however, again offer to look at whether it could assist Mr G, given he had told it he could not afford to pay the mortgage at any of the interest rates that were available to him. Mr G didn't take up Kensington's offer and, as he was not satisfied with the response, he referred the complaint to this Service.

One of our Investigators considered the complaint, but she didn't recommend that it be upheld.

Mr and Mrs G did not accept the Investigator's conclusions. Mr G said he had evidence that the CMS contacted Kensington in November/December 2022, and Kensington gave it information about him wanting to add Mrs G to the mortgage. He said that Mrs G had been living in the UK for long enough to have obtained a further visa and that another lender had not had an issue with it offering to lend based on the existing one. It was also raised that Kensington had not highlighted the requirement regarding leave to remain upfront and only mentioned it when it "needed" to decline the application. Mr G also said that they had only become aware of the interim charging order when he and Mrs G were arranging to re-mortgage in May 2024 and questioned whether Kensington had told him anything about it before that.

Subsequently, Mr G raised concerns about the information Kensington had provided him with following him making a data subject access request (DSAR). He was unhappy that there were redactions contained in some of the documents he was supplied with. Mr G speculated about why that was, especially after Kensington explained the reasons for redactions and confirmed that any communication with legal professionals would be redacted as it would be considered legally privileged. This led Mr G to speculate about what Kensington had been speaking to solicitors about.

Kensington issued two final responses on 6 March and 25 April 2025 regarding Mr G's concerns about the information he had been provided with and the redactions contained in it. It said it was satisfied that the redactions were correctly applied as they related to third party information such as employee names. However, following review, it had been able to remove some redactions as the information would already be known to him and it had repeated the DSAR process. Kensington suggested that if Mr G was unhappy with the fact that it had redacted information in the DSAR, he should raise the matter with the Information Commissioners Office, but he was also given referral rights to this Service.

Mr G subsequently told us that he believed that Kensington had something to hide and that was why information had been redacted. He maintained that he thought Kensington had been speaking to the CMS as early as November 2022, that it had received legal advice indicating he would be unable to re-mortgage with the interim charging order in place, and that had led to the interest rate Kensington was applying to his mortgage being higher than it should have been.

The Investigator considered Mr G's concerns about the information he had been provided with. She commented that the redactions appeared to be consistent with what we would

expect to in a DSAR in order to protect other people's personal information and comply with data protection regulations, along with keeping any communications with legal practitioners confidential. She didn't consider this indicated that Kensington was concealing information. Mr G reiterated previous comments about what he thought had happened and what he believed Kensington had done. He asked that the complaint be referred to an Ombudsman.

### **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.

Firstly, I would like to confirm that we are not the Financial Conduct Authority (FCA) as Mr G has referred to us. The FCA is the regulator of financial businesses. Its role is to oversee how a business operates generally, and where it has done something wrong, it has the power to sanction, punish or fine a business.

We are the Financial Ombudsman Service. We are an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences. We do not have the same powers as the FCA and we do not have the authority to determine whether or not a business has breached legislation, broken the law, is in breach of contract and we also don't award damages – all of those matters fall within the remit of the courts.

Our service is independent and impartial; we do not represent the interests of businesses, nor are we consumer champions. If the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual documents in isolation. We consider everything together to form a broader opinion on the whole picture.

Our enabling legislation, the Financial Services and Markets Act 2000, provides at section 225 that we are required to resolve complaints "*quickly and with minimum formality*". We are impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court.

I will consider the matter of Mr G's concerns about Kensington's contact with the CMS first, as these feed into his other concerns. Mr G has said that he believes that Kensington had contact with, and provided information to, the CMS as early as November 2022. He believes this may have led to the action it decided to take.

I have reviewed all of the evidence in this case, and while I acknowledge that Mr G believes that Kensington has lied about this matter, I have seen no evidence that is the case. The only contact Kensington had with the CMS was receipt of a letter enclosing a copy of the interim charging order in October 2023. It didn't respond to that letter and simply appears to have made a note of the interim charging order's existence, which is all I would have

expected it to do. So I can't find that Kensington provided the CMS with any information it should not have, nor can I conclude that the legal action taken by the CMS was as a result of anything that Kensington did. Furthermore, I have seen nothing that indicates that Kensington looked into taking legal action itself to repossess Mr G's property due to the interim charging order being made.

That said, when the CMS started legal proceedings, it was the CMS' responsibility to inform Mr G of that action. In addition, when the interim court order was made, the court would have sent the order out to both the CMS and Mr G. It was a copy of the court order that was sent to the CMS that was forwarded to Kensington in October 2023. So there was no need for Kensington to contact Mr G to make him aware of either the pending legal action or the interim charging order, as he should already have been aware of both of those facts due to the actions of the parties involved. While I note that Mr G has said that the first he knew about the legal action or court order was when Kensington informed him a few weeks after receiving the copy order, that is not what the content of the conversation at the time indicates. Mr G confirmed that he was already aware of the proceedings and had appealed the interim charging order. However, even had he not been aware, it does not alter the fact that it was other parties' responsibility to inform Mr G of the actions being taken.

That said, it is the case that a lender should contact a borrower when it becomes aware of anything that might have an effect on the mortgage. While the charging order was an interim one, it would be unlikely to have any effect on the mortgage, but Mr G would not have known that. Indeed, his comments to us clearly indicate the opposite. While Kensington was not responsible for making Mr G aware of the legal proceedings or the order itself, I think it may have helped Mr G to have been contacted to discuss its existence and to let him know that the interim order would not have any effect how his mortgage would be administered. That said, Mr G was made aware that Kensington had been informed of the order a few weeks after it was received, at which point he could have asked any questions he wanted to. So I am not persuaded Mr G has suffered any disadvantage due to when Kensington made Mr G aware it knew about the interim charging order.

As for the situation relating to interest rates, Mr G's interest rate product expired at the end of July 2024. When the mortgage was offered to Mr G in 2022 it was confirmed that at the end of the term of the product, the mortgage would revert to a variable rate that was 4.8% above Kensington's standard rate. It was also explained that Kensington's standard rate would be between 0% and 1% higher than Bank of England Base Rate (BEBR). At the time the Mr G's fixed rate ended, BEBR was 5% and so the rate Mr G's mortgage reverted to does appear to be in line with what he was told in the mortgage offer.

As for the products that were available to Mr G for when his existing one ended, while they might have been slightly higher than some lenders, it appears that they were generally in line with what was available in the mortgage market. While I know that Mr G believes that Kensington increased the rates it made available to him in order to take advantage of his inability to re-mortgage, but he has provided no evidence to support that belief. Based on the information that is available, it does not appear that Kensington did anything it should not have in relation to the interest rate his mortgage reverted to or those that it offered as replacements for the expiring product.

I now turn to the matter of the application to add Mrs G to the mortgage. As the Investigator explained, a lender will set criteria for the mortgages it is willing to advance based on the risks it is willing to take. Different lenders will be willing to take different types of risk and so potential borrowers may get very different answers from different lenders when they apply for a mortgage. It does not mean that a lender that declines an application, where another is willing to make an offer, has done anything wrong. So the fact that another lender was willing

to offer a mortgage to Mr and Mrs G, doesn't mean that Kensington was wrong to decline to add Mrs G to the existing mortgage.

I have reviewed Kensington's policy, and it does require a borrower to have indefinite leave to remain in the UK. There is nothing wrong with it having this policy, given that mortgages are long-term products where the ability of a borrower to remain in the UK could have a significant impact on whether they would be able to maintain the mortgage. So I can't find that Kensington was wrong to decline to allow the application to progress in 2024 based on the information it had about Mrs G's residency status.

Mr G has said that Kensington should have made him aware of this requirement at an early stage. However, I note from the information contained in the DSAR paperwork that, before his application was accepted in 2022, he had to provide evidence that he had indefinite leave to remain in the UK. So it would appear that Mr G was aware of this requirement long before asking for Mrs G to be added to the mortgage. While I can understand that he and Mrs G would not have been happy that Kensington's policy meant that she could not be added to the mortgage, it does not mean that Kensington was wrong to apply its policy as it would to any other application.

Mr G has raised concerns about the information he was given as part of the DSARs he requested from Kensington. The Information Commissioners Office is the appropriate body to consider whether Kensington has breached any specific requirements of the rules surrounding the provision of data to him. However, we can look at the service provided, and I would confirm that in general terms, Mr G is not entitled to information that is legally privileged or that would be considered to be another individual's personal information. It is normal for such information to be redacted from documentation provided. It appears that the redactions Kensington made related to such information. While it issued a second set of information, based on Mr G having already had some of the redacted information during the exchange of correspondence, I am not persuaded that it was wrong for Kensington to err on the side of caution initially in relation to other individual's personal information.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs G to accept or reject my decision before 25 July 2025.

Derry Baxter  
**Ombudsman**