

The complaint

Mrs B and Mr K complain that OneSavings Bank Plc trading as Kent Reliance ("Kent") had only recently told them about almost £6,000 of fees on their mortgage. They said Kent hadn't mentioned that balance before and they didn't think they should be asked to pay it.

What happened

In November 2023, Mrs B and Mr K said Kent told them about almost £6,000 on their mortgage, which was made up of unpaid fees and interest. They said Kent hadn't mentioned this to them before. They said they should have to make up that money and they didn't think Kent should charge interest on that, or that it should apply any fees and charges to their mortgage now. Especially because it hadn't mentioned these for such a long time. They said if they'd known about this sum, they would have cleared it long ago, before all the interest was charged.

Kent said the previous lender had notified Mrs B and Mr K of these fees when they were applied. This mortgage then transferred to Kent, after 7 July 2017. And Kent accepted it had stopped sending the regular reminders of these fees and charges then. So it hadn't brought these fees, and the interest incurred on them, to the attention of Mrs B and Mr K until recently. Kent said it had already put arrangements in place to rectify this, but because it hadn't been alerting Mrs B and Mr K to the fees and charges regularly since 2017, it offered to pay them £200 in compensation.

Another ombudsman decided that we could only consider a complaint about unpaid fees and interest after 7 March 2017.

I issued a provisional decision, proposing to uphold the complaint in part. Subject to any further submissions, my provisional findings, which form part of this decision, were:

I am satisfied that I have enough evidence to be able to reach a fair decision in this case. It is open to either side to provide any further information if they wish. I agree with the conclusions reached by my colleague regarding jurisdiction.

We have evidence that up until July 2017 the lender sent Mrs B and Mr K information setting out the amount of arrears and how much of the arrears balance was made up of unpaid fees.

It is not in dispute that between July 2017 and November 2023 Kent did not tell Mrs B and Mr K about the unpaid fees. I do not consider that was fair. Kent had duty to provide information that was clear, fair and not misleading – and that ought to have included the unpaid fees balance and any additional interest it was attracting.

Where a business has not acted fairly our approach is to put the affected party back in the position they would have been in had they been treated fairly in the first place. So what I need to decide is what I consider is most likely to have happened based on the evidence available to me. Was it likely that Mrs B and Mr K would have made any payments to the unpaid fees had they known about them? And what is a fair way to put things right in all of

the circumstances.

Mrs B and Mrs K's position is that if they'd have known about the unpaid fees and interest they would have taken steps to address it and would have cleared the fees balance some time ago.

Kent's position is that Mrs B and Mr K were in persistent arrears until February 2020 and in sporadic arrears after that. So it is unlikely they could have afforded to repay the unpaid fees. It also said that there was a lack of engagement at times.

I agree with Kent that the evidence I have seen makes it unlikely that Mrs B and Mr K could have afforded to repay the unpaid fees and interest until February 2020. Presumably they were already paying as much as they could to reduce the significant arrears on their mortgage. It seems unlikely in those circumstances that they could – or would have wanted to – have found anything extra to pay more to their mortgage to reduce the unpaid fees and interest. If they did have the funds, there was a reasonable expectation that they would have used them to reduce the arrears balance they knew about more quickly than they did.

Therefore, I do not consider that Mrs B and Mr K would have paid any more to the mortgage between July 2017 and February 2020 had they known about the unpaid fees balance.

Mrs B and Mr K repaid the arrears balance in February 2020. But they were then in arrears for 14 out of 45 months up until November 2023. It follows, that it would be difficult for me to find that Mrs B and Mr K would have made consistent payments towards the unpaid fees. I say that because for a significant number of months they were not even able to afford or did not pay the contractual amount due. Therefore, I do not see how they could have made a payment towards the unpaid fees in those months.

In saying that, we can see that between 2019 and February 2020, Mrs B and Mr K were able to reduce the arrears from over £5,000 to zero. So it would appear there was at times some capacity and willingness to pay down the arrears. I consider it more likely than not that if they had been told about the unpaid fees and additional interest then they would have taken at least some steps to address them from February 2020 once the arrears had been repaid.

Further, it appears that from January 2024 Mrs B and Mr K made the payments that were due to their mortgage. I agree that they were aware of the fees at that point – so they had the opportunity to mitigate their loss by paying as much as they could towards the unpaid fees once they were aware of them. But I also have to take into account that they had an ongoing dispute regarding the unpaid fees. While Kent told Mrs B and Mr K they should arrange to repay the unpaid fees, it could have done more to explain that by doing so it would not have compromised this complaint, should it be upheld.

I have given very careful thought to what is a fair way to put things right. As I've explained I agree with some but not all of the points that both sides have made. I accept that Mrs B and Mr K were in arrears for 14 out of 45 months between February 2020 and November 2023 – so around a third of that period. Of course, the other way of looking at that is that they paid 31 out of 45 payments that were due. But it does not necessarily follow that they could have afforded to pay towards the unpaid fees in the months they did pay in time – or that even if they could, that they would have done so.

I also accept that there was at times a lack of engagement by Mrs B and Mr K with Kent. And even when Mrs B and Mr K were previously paying down the arrears there were no consistent amounts of repayments or contact – they've also told us that the cost-of-living crisis has impacted them. But their past-history supports that it is likely they would have made some payments towards the unpaid fees had they been aware of them. They have a

track record or repaying arrears when they were aware of them, albeit I am not persuaded they could or would have repaid the full unpaid fees balance, bearing in mind their payment history.

In all the circumstances, I consider that Kent should reduce the unpaid fees balance by a third – so by 33.3%. That reflects my findings above and that it also did not set out with sufficient clarity that making payments towards the unpaid fees would not harm the outcome of their complaint.

That leaves a payment for distress and inconvenience. I accept what Mrs B and Mr K have said about the distress and inconvenience this matter has caused to them. I agree they had the shock of finding out that there was a further balance to repay and the distress and inconvenience of dealing with this matter. But I also have to take into account that the disputed amount is around £6,000 and as I've said Mrs B and Mr K could have taken steps to mitigate their loss

I consider that an award up to £750 would be fair in the circumstances here – although I think I would likely award £600. The mistake has caused considerable distress, upset and worry that needs a lot of extra effort to sort out with the impact over months. I'd note I am looking at the impact on this matter where Kent has not acted fairly. It is not solely responsible for how long this complaint has taken to resolve.

But if Mrs B and Mr K accept my decision, they will have saved money. That is because they will not have had to pay a third of the unpaid fee balance that was due. Our approach in these circumstances is that we reduce any compensation for distress and inconvenience by the amount of the savings. Kent said the unpaid fees and interest balance is £5,917. A third of that is £1,972. That is more than I would have awarded as compensation for distress and inconvenience. So Kent does not need to make a payment to Mrs B and Mr K for any distress and inconvenience.

Mrs B and Mr K have asked for a breakdown of how the unpaid fee balance has accrued. Many of the fees will have been applied before March 2017. As I already explained I do not have the power to look at how those fees were applied.

I can consider the fees applied after 7 March 2017. Bearing in mind the way the account was conducted and level of arrears the total amount of fees applied by Kent does not seem unreasonable. There has been a significant amount of additional work that Kent has had in administering the arrears on the account over several years. And it is entitled under the relevant rules to apply fees to reflect that.

I'd ask for Kent's comments about whether it is able to provide a breakdown of the unpaid fees and I'd encourage it to do so. But in view of the length of time since some of them were applied, the fact that Mrs B and Mr K were made aware when the fees were applied, as I can't consider whether any fees or interest applied before March 2017 were applied fairly and as I've found the fees applied since then were fair, I do not think I could fairly compel it to do so.

If Mrs B and Mr K accept my decision, Kent should write to them setting out what the remaining unpaid fee balance is. It should then agree an affordable plan to repay the unpaid fee balance. It is reasonable for it to require details of Mrs B and Mr K's income and expenditure so it can decide what is an affordable amount for them to repay. It should provide statements setting out what the unpaid fees balance is, how much interest has accrued and what payments they have made.

Kent accepted my provisional findings. Mrs B and Mr K did not. They responded to make a number of points, including:

- It was inaccurate to say that they were in arrears for 14 out of 45 months between February 2020 and November 2023. In many of those months payments were often only late by a day or two as they prefer not to use automated payments. That was not a sign of financial instability or an inability to meet their obligations.
- They have provided a copy of Mr K's credit file that shows the payments were recorded as "OK" meaning they were paid when due.
- Had they been aware of the fees sooner they would have acted to repay them gradually or in full. Their past conduct reflects that when they are told about arrears they worked to reduce and clear them.
- The central issue is that they were not made aware of the separate and growing balance until November 2023.
- They disputed that they were not responsive to its contact and that effort was needed to contact them. They don't recall Kent making any effort to contact them – and if it had it would have responded.
- The proposal to waive a third of the fees and interest does not sufficiently address the harm caused, in view of the sudden discovery of a hidden balance and the emotional burden of pursuing this complaint.
- They should receive compensation for the distress they experienced.
- Kent should provide a breakdown of the fees.

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 looked at Mrs B and Mr K's payment record from February 2020 until November 2023. I think Mrs B and Mr K are correct, that often the payments were only a day or two late. I also accept that in the past they have successfully repaid the arrears on their account. It is also not in dispute that Kent did not take sufficient steps to make them aware of the unpaid fees balance.

I consider that the evidence Kent has provided does support that Mrs B and Mr K did not always meaningfully engage with it. Kent has provided evidence that supports it often unsuccessfully tried to contact Mr and Mrs K when their account was in arrears.

The question for me is what is most likely to have happened had Kent made Mrs B and Mr K aware of the arrears. I don't think the points above change anything. While the fact that Mrs B and Mr K could make the payments within a few days of them falling due, it does not necessarily follow that they could have afforded to pay anything towards the unpaid fees and interest on top of that – or that they would have paid anything had they known about them. I have not been given any evidence that supports they had the surplus income to repay the unpaid fees in full during the period in question.

I also note that once Mrs B and Mr K were made aware of the fees they did not make any

payments towards them. I've already found that Kent could have done more to assure Mrs B and Mr K that by making payments to the fees it would not harm their complaint. But on the other hand, they had a duty to mitigate their loss and to prevent any loss or harm growing.

I would also highlight that Mrs B and Mr K have told us they were "*already struggling to pay other bills like council tax*" and their circumstances had affected their ability to work in the year and a half before they referred their complaint to us – so from around September 2022.

Ultimately, it is for me to decide what is fair and reasonable in the individual circumstances of this complaint. I am not persuaded that if Kent had made Mrs B and Mr K aware of the unpaid fees earlier that they would have repaid the full balance by now. In all the circumstances, I do not consider it would be fair to say that the full balance should be written off – and bearing in mind I can't consider the fairness of any fees or interest that were applied before March 2017. The balance was already around £4,000 by that point.

I've already found that it was unlikely that Mrs B and Mr K could have paid anything towards the unpaid fees until February 2020. It was reasonable for Kent to apply interest to that balance. So I don't have any reasonable basis to say the interest should be written off before that point. And there is no evidence that Mrs B and Mr K had the resources to make a lump sum payment towards the unpaid fees – or that they could have repaid the full balance.

After very careful consideration, in all of the circumstances, I consider it is fair for Kent to write off a third of the outstanding balance of unpaid fees and interest. That reflects that it is likely that Mrs B and Mr K would have taken some steps to pay down the balance had they been made aware of it – but that I am not sufficiently persuaded they would or could have paid more than that.

I know Mrs B and Mr K might not see it this way, but by writing off a third of the balance, that is effectively a saving for them – that is money they otherwise would have had to pay themselves. In the circumstances, I think it is fair to offset that against any award for distress and inconvenience. So I am not making a separate award for that.

If Mrs B and Mr K accept my decision it will leave with them with a total balance to repay that is around what would have been due in any event in March 2017 – and I note they were made aware of the fees up until July 2017.

Kent should contact Mrs B and Mr K to arrange an affordable plan to repay the remaining fees balance.

Kent has not commented on whether it can provide a breakdown of the fees. I think it should do so. But there may be limitations to what it can supply because of the passage of time. It should use its best efforts to provide what information it can to Mrs B and Mr K.

My final decision

My final decision is that OneSavings Bank Plc trading as Kent Reliance should:

- Write off a third of the unpaid fees and interest balance.
- Send Mrs B and Mr K a breakdown of the fees it has applied.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr K to accept or reject my decision before 27 June 2025.

Ken Rose
Ombudsman