

## **complaint**

Ms D has complained that, on 7 January 2019, Kensington Mortgage Company Limited paid an outstanding rentcharge of £1,874.02 when there was a payment plan in place with the management company.

## **background**

Ms D has a mortgage account with Kensington on a property which is subject to a rentcharge and management fund.

In December 2018 Kensington was contacted by a firm of debt collectors acting on behalf of the property trust ("the trust") which levied the rentcharge. The debt collectors said that £1,874.02 was outstanding and had not been paid by Ms D. Kensington wrote to Ms D on 21 December 2018 asking her to contact the debt collectors, or to provide Kensington with proof of payment.

On 7 January 2019 the debt collectors confirmed the debt was still outstanding. Kensington paid the outstanding amount of £1,874.02 (plus an administrative fee of £55) in order to prevent action being taken to forfeit Ms D's lease.

Ms D's son complained on her behalf to Kensington, saying that he had paid the rentcharge in November 2018, in line with a payment arrangement agreed by the trust. He was also unhappy that Kensington had failed to carry out 'due diligence' and that Kensington contacted the debt collectors without authority.

Kensington didn't uphold the complaint. It said it had dealt with the same debt collectors in the past in relation to money owed on Ms D's property. Kensington also said that the debt collectors had confirmed in January 2019 that the debt was still outstanding.

Ms D complained to us where an investigator looked at the complaint. The investigator didn't think Kensington had done anything wrong and so didn't uphold the complaint.

Ms D disagreed with the investigator's findings. She said that the trust has dishonestly made false representation, knowing that the representation was untrue and misleading, with intent to make a gain for itself whilst exposing her to risk and loss. Ms D also said that the trust fraudulently failed to disclose information to Kensington, whilst under a legal duty to disclose that information with the dishonest intention of making a gain and causing loss to her.

Furthermore, Ms D says that when Kensington was challenged about the payment it had made, there was a failure to refund the transaction, which Ms D says was in breach of regulations. Ms D argues that where a customer has not authorised a payment, Kensington is required to reimburse it.

Finally, Ms D is unhappy that she is being charged interest on a dishonest, false and fraudulent representation made by a third party for money to which it is not entitled.

## **my findings**

I confirm I've read everything provided by Ms D and Kensington. I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

I will begin by explaining that the Financial Ombudsman Service is not a regulator, and we have no power to 'police' financial businesses. What I have to decide is whether Kensington, in making the payment to the debt collection agency, has acted fairly and reasonably.

The starting point here is the mortgage contract, which includes the terms and conditions ("T&Cs"). I've looked at the T&Cs carefully and note they contain the following provisions.

Kensington's T&Cs state at 33.3 that Ms D *"must promptly settle any rent, rates, taxes or other bills that are due in connection with the property..."*.

At 51.2 the T&Cs say *"If default is made by you in performance or observance of any of the terms of your Mortgage, we may (without being obliged to do so) take such reasonable steps as may be necessary to remedy or secure performance of the same."*

At 51.3 Kensington states that Ms D is responsible for *"any costs, charges or expenses (including legal expenses) at all that we have to pay or bear, as well as our reasonable administrative expenses in connection with any steps we take:...(b) to protect or perfect our security; (c) to remedy or secure the performance or observance of any of the terms of your Mortgage..."*.

Given the above, I'm satisfied that Kensington has the right to pay outstanding rentcharges and other expenses and to recover the cost of doing so from Ms D. It doesn't need Ms D's prior authority to enable it to do so. Given this, whilst I've noted the points Ms D has made about what she says is her entitlement to a refund due to an *"unauthorised payment"*, that doesn't apply in these circumstances.

I've noted what Ms D has said here about what happened – which is that the trust made a false, misleading and fraudulent demand for money and that the trust fraudulently failed to disclose material information to Kensington. If that is, in fact, the case, then that's something Ms D will need to take up with the trust – or with the police if she believes that the trust has defrauded her.

But what I have to decide is whether Kensington acted reasonably in paying the debt collectors £1,874.02 on 7 January 2019.

I'm satisfied Kensington was entitled to rely on the information given to it by the debt collectors about the amount outstanding in December 2018. I note that before making

payment Kensington both wrote to Ms D and – on 7 January 2019 – checked with the debt collectors that the debt was still outstanding.

In the circumstances, I'm satisfied Kensington acted reasonably – and in line with the terms and conditions of the mortgage contract – in paying the amount demanded. If, as Ms D contends, the information given to Kensington was false, she'll need to take that up with the debt collectors or the trust.

I know this isn't the outcome Ms D was hoping for. I can see she feels very strongly about what she perceives to be a fraud perpetrated on her by the trust. But for the reasons given above, I don't think Kensington has done anything wrong.

### **my final decision**

My decision is that I don't uphold this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 19 March 2020.

Jan O'Leary  
**Ombudsman**