

complaint

Mr and Mrs H complain that their mortgage lender acted irresponsibly in lending their mortgage. Although not their original lender, Kensington Mortgage Company has taken then mortgage over and is responsible for this complaint.

background

In 2008, Mr and Mrs H re-mortgaged via a broker. They borrowed just over £310,000 on capital and interest repayment over a term of 25 years. The aim of the re-mortgage was to replace their existing mortgage and second charge loan, and consolidate a number of unsecured debts.

The mortgage lender has been Kensington since 2016, though it was originally a different business which no longer trades.

In summary, Mr H complains, on behalf of himself and Mrs H, that it was irresponsible to lend, and in breach of the mortgage regulations, because:

- The property was overvalued, and was actually worth less than the amount lent.
- The monthly payment was unaffordable for Mr and Mrs H, given their income at the time.
- Mr and Mrs H weren't lent enough money to cover their outstanding unsecured debts.
- The term runs into their intended retirement.
- The amount borrowed was more than 85% of the property's value, which meant it was outside the lender's lending criteria at the time.

Our investigator didn't uphold Mr and Mrs H's complaint. As Mr and Mrs H disagreed with our investigator's findings, the complaint has been passed to me for final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Firstly, as Kensington has consented to us looking into this complaint, I don't need to consider whether or not Mr and Mrs H complained within the time limits set by the regulator. And although the mortgage originated with a different lender, as Kensington now owns and administers the mortgage, I'm satisfied it's responsible for this complaint. For ease, I shall refer to the lender as Kensington throughout.

It's clear that Mr and Mrs H feel very strongly that their mortgage was mis-sold to them. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

This mortgage was sold by a broker. We are considering a separate complaint against Mr and Mrs H's broker under a separate reference. Where a broker gives advice, generally

at the time the broker was responsible for advising on whether the mortgage was suitable and affordable – though the sale was recorded as being on a non-advised basis in this case.

That said, when considering Mr and Mrs H's application, Kensington needed to take into account their ability to repay the mortgage, including any known or expected changes to their income – such as retirement. Kensington also needed to decide whether or not it considered the property to be good security for the mortgage.

property valuation

Mr H disputes the valuation reached by the surveyor, providing a number of property listings from the nearby area to support his position. He also points to the value of the property given on the mortgage application, which appears to have been amended from £270,000 to £370,000.

It's not clear whether the figure on the application form was mistakenly noted originally as £270,000 by the broker or amended following the valuation by the surveyor. In either case, I wouldn't expect Kensington to have relied on the figure in the application. I would have expected it to arrange a valuation to determine whether or not it was willing to accept the property as security for the proposed borrowing.

Kensington employed the services of a surveyor. Kensington needed to instruct a suitably qualified surveyor, which it did in this instance by appointing a member of the Royal Institute of Chartered Surveyors.

Kensington isn't responsible for the actions of the surveyor, including the valuation figure they reached. I think Kensington acted reasonably by accepting the valuation the surveyor reached, and relying on the valuation to decide the property was acceptable security for the proposed borrowing. I haven't seen any evidence that the valuation was contested at the time. I don't think it was unfair for Kensington to rely on the valuation in deciding how much to lend.

Did Kensington lend responsibly?

The remainder of Mr and Mrs H's points are about the affordability of the mortgage, and Kensington's decision to lend. As the lender, Kensington needed to take into account Mr and Mrs H's ability to repay the mortgage in deciding whether it was responsible to lend.

Mr H complains that Kensington lent more than 85% of the property's value which was outside its lending criteria.

Kensington has said that, although it doesn't hold the original lender's full criteria, it's aware that it would lend up to 85% of the property's value, excluding any fees. In this case, it was the fees which took the loan to value ratio very slightly above 85%. In any case, it wasn't uncommon at the time – and still isn't – for lenders to offer mortgages up to 95% of the value of a property. So, overall, I don't think it was unreasonable for Kensington to lend just over 85% of the value of Mr and Mrs H's property. And in any case if fees were excluded from the calculation – as appeared to have been the lender's policy at the time – the loan to value is clearly below 85%.

Mr H complains that the monthly repayment, just over £2,100, was clearly unaffordable for them. He also complains that Kensington didn't lend them enough to repay all of their outstanding debts.

The point of sale documentation I've seen includes a list of Mr and Mrs H's outstanding debts, which included their existing mortgage and secured loan, two personal loans and a number of credit cards. Their fixed monthly commitments for these debts totalled considerably more (at least £300 more) than the prospective monthly mortgage payment, and all their accounts were up to date. The new mortgage would reduce Mr and Mrs H's outgoings each month, putting them in a more affordable position than before. So I think it was reasonable for Kensington to believe the monthly mortgage payment would be manageable, and take the decision to lend on that basis.

In terms of the amount lent not being enough to cover Mr and Mrs H's outstanding debts, I think it's clear from the application and list of credit commitments that they were overstretched. I think it's likely their monthly outgoings were exceeding their income. So I think it's likely their debts grew in between the application and the completion of the mortgage. I don't think that's something I could reasonably expect Kensington to be aware of, and I don't think it's a reason it should have lent more. Even with the increase in their outstanding personal debts, the funds released by the mortgage should have given Mr and Mrs H breathing space by reducing their monthly commitments.

Mr H also complains that the term of the mortgage runs past their intended retirement dates, and he's concerned it won't be affordable for them at that point. I think it's clear that the proposed lending was at the limits of what Kensington would accept. I think it's likely the term was set beyond Mr and Mrs H's intended retirement dates to lower the monthly payment.

The application asked Mr and Mrs H how they planned to cover the cost of the mortgage after retirement. They said they'd sell the property or move in with family.

At the time, Mr and Mrs H's retirement was at least 20 years in the future. And for the reasons I've outlined above, I think it's fair to say they had a need to consolidate their existing debts. It's not uncommon for borrowers' circumstances to change during the term of a mortgage – it's likely their salaries will rise over time, for instance. Equally, they may choose to change mortgage providers or sell their property and move elsewhere. As I've explained, when reaching the decision to lend, Kensington only had to take into account Mr and Mrs H's ability to repay – and I think it did. Overall, I think Mr and Mrs H were left in a better position having taken this mortgage than they were before.

my final decision

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 12 September 2020.

Simon Pugh
ombudsman