

background to the complaint

On 27 June 2005 Mr W signed an application for a regulated secured loan with Money Partners, after receiving advice from a broker. The application also included the direct debit mandate in favour of Kensington.

The loan agreement shows that, in accordance with the requirements of the Consumer Credit Act 1974 ("the Act"), Mr W was given an advance copy of the agreement on 27 July 2005. He then had seven days to decide whether or not he wanted to go ahead with it.

On 20 August 2005 Mr W signed the loan agreement.

On 12 October 2005 the loan completed with Money Partners, and was immediately transferred to Kensington Mortgage Company Limited. Mr W borrowed a total of £13,200 (including £1,200 commission paid to the broker) over a period of 18 years, at a variable interest rate, initially at an APR of 14.4% and now 9.9%.

At the time the secured loan was taken out Mr W already had a first charge mortgage with a different sub-prime lender for about £30,000 (so in total, with the secured loan, his total debt was about £43,200). I am told that the first mortgage has since been repaid.

Payments weren't always maintained, and over the years payment arrangements have been made with Kensington. Legal action to repossess the property has been threatened, but as I understand it, no proceedings have been commenced in the county court (although solicitors were instructed and legal costs incurred).

Previous complaints have been brought to us by Mr W.

In 2011 an ombudsman explained that the broker wasn't Kensington's agent in relation to the sale of the loan. The ombudsman also explained that, even if the broker had still been in business, we couldn't have considered a complaint against it about the sale of the loan in any event. This is because our rules didn't allow us to consider a complaint about the sale in 2005 of a second charge secured loan by a broker.

In 2015 Mr W brought another complaint, this time about fees and charges, including legal fees. Kensington offered to refund £1,350 of fees (but not legal fees) and adjust interest accordingly. Mr W accepted this, but did so informally with Kensington rather than returning our settlement form.

Mr W has now raised a number of issues about the loan, both directly and through his MP. These can be summarised as follows:

- Money Partners (the original lender) and Kensington are essentially one and the same organisation. Kensington is therefore responsible for the sale of the secured loan.
- He was coerced by the broker into signing the Money Partners loan agreement on 20 August 2005. But because he was unhappy with it, Mr W didn't return the loan agreement to the broker. Mr W says "*the original agreement was cancelled during the 14 day cooling off period*". He has explained that a form to this effect was given to the broker.
- Mr W says that the original agreement was "*replaced by an amended loan agreement*".

- On a subsequent visit to his home in early October 2005 the broker asked Mr W to give him the agreement he'd signed on 20 August 2005.
- Mr W now assumes that Money Partners was not told of the cancellation and subsequent amendment to the loan and that the broker sent in the agreement signed by Mr W on 20 August 2005.
- His statement of income on the application was forged by the broker. Mr W says the broker was paid £1,200 "*for this criminal activity*". Mr W says Kensington knew that his total debt (his first mortgage with another lender and the secured loan) would be over £42,000 and the repayments were unsustainable on his actual income.
- His present complaint concerns the matter of the flexibility promised in the amended agreement. Mr W says that during the period 20 August 2005 (when he cancelled the original loan during the "*cooling off period*") and 12 October 2005 (when the "*amended loan*" was completed) he was subjected to constant pressure selling by the broker, promised more flexible terms and as, a result of such coercion, agreed to the revised loan.
- He is asking for "*documentary proof that the original agreement was cancelled during the 14 day cooling off period*". Mr W says Money Partners would have had to agree to the amendments and presumably would have passed on the details to Kensington.
- Despite requests, he's not received copies of correspondence or telephone logs covering the period 20 August 2005 (after he signed the original agreement) to 12 October 2005 (when the loan was completed).
- Mr W is unhappy that Kensington is now saying that it didn't receive the revised loan agreement. But Mr W says Kensington knew that the original loan had been cancelled, because the direct debit set up in June 2005 was also cancelled and there was no further movement for seven weeks until Mr W was coerced by the broker into "*a revised agreement with Money Partners*".
- Through his MP, Mr W says he was "*nearly coerced*" into taking out a mortgage of £42,000 (but didn't).
- Mr W's MP wants Kensington to agree that the current interest rate of 9.9% is immoral because it is over three times higher than Kensington's most competitive interest rate for a two-year fixed rate regulated mortgage.

Mr W's MP has said that she wants Kensington to do the following:

- refund the excess interest Mr W has paid compared with the cost of "*a conventional loan that should have been available to him*";
- refund fees and charges incurred for taking out the loan;
- pay compensation for distress and inconvenience he has suffered "*since he took out the loan in 2007*"; (sic)

- write off the outstanding balance.

Mr W has also complained that Kensington hasn't worked with him in relation to payment arrangements, and he's unhappy about arrears fees applied to his account. An investigator looked at this but didn't think Kensington had done anything wrong.

provisional decision

On 30 August 2018 I issued a provisional decision on this complaint. A copy of the provisional decision is attached to, and forms part of, this final decision. In my provisional decision I explained why I didn't think the complaint should be upheld.

In summary, I was satisfied that the terms of the loan agreement signed by Mr W on 20 August 2005 hadn't been varied, amended or changed – either in the various ways Mr W suggested it had, or indeed at all.

I was also satisfied that the interest rate applied by Kensington was reasonable for this type of loan. I found nothing untoward in relation to the handling of arrears, or the application of fees and charges.

In response to the provisional decision, Kensington has confirmed that it holds no information or documentation between Money Partners and the broker. Kensington has also provided the information requested about the payment history and interest rates.

Mr W has made very detailed submissions in response. I will deal with the relevant points he's made in my findings below.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've re-visited my provisional decision, in the light of everything Mr W and Kensington have said in response. I won't be addressing any new issues that have arisen since the provisional decision. If Mr W is unhappy about anything Kensington has done since the provisional decision, he will need to raise this first with Kensington and then with us, if the matter can't be resolved between them.

I don't doubt that this is very important for Mr W, but 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; rather it's because I don't think I need to comment on it in order to reach my decision. That includes the points Mr W has reiterated about the sale of the loan which, as I explained in my provisional decision, doesn't fall within the scope of this decision.

The issue in this complaint is that, after he signed the loan agreement on 20 August 2005, Mr W says he and the broker had negotiated new, different, terms that were more advantageous to Mr W. He says these were embodied in a fresh agreement which was put into place before the loan completed on 12 October 2005.

But Mr W says that, for some reason, when the loan was transferred from Money Partners to Kensington immediately after completion, the new agreement wasn't handed over. Instead it was the 'old' agreement – the one he'd signed on 20 August 2005 – which was the document provided to Money Partners and then to Kensington.

the broker: Another ombudsman explained to Mr W in 2011 why we can't consider a complaint against the broker. I acknowledge Mr W's strength of feeling that the broker had a past criminal conviction. But given Mr W's insistence on factual accuracy, I think it's important to explain that the criminal offence for which the broker was convicted had nothing to do with the sale or arrangement of mortgages.

On 22 December 2006 the broker was prohibited from performing any function in relation to any regulated activity by the regulator (then known as the Financial Services Authority). This was because, when he'd applied for registration in 2004, he'd failed to mention a criminal conviction. The FSA notice explains that this had been a single conviction which took place in 1989 during the course of his previous employment – which I note was not as a financial adviser. The offence was unrelated to advising on, or arranging, mortgages.

I appreciate Mr W feels very strongly that the arrangement of his secured loan by the broker was a criminal act. If Mr W believes he's been the victim of a crime committed against him by the broker, this would be a matter for the police.

Money Partners and Kensington: I'm satisfied that Kensington had no involvement in the sale, underwriting, approval or granting of the loan. In my provisional decision I explained the relationship between Money Partners and Kensington. There is nothing I can add to this. Kensington took over the loan after it had been completed on 12 October 2005.

Kensington has confirmed it holds no information or records about any contact or dealings between the broker and Money Partners between July 2005 and the date the loan completed on 12 October 2005. I wouldn't expect it to, as it wasn't involved in the transaction until after the loan completed.

sub-prime loan: Mr W is unhappy that I said his first mortgage was with a sub-prime lender. But that lender – and another lender in the same group which later took over Mr W's mortgage – are not mainstream lenders; both operate only in the sub-prime market. This is not my opinion – it is a fact.

fee refund: Mr W says that he did not receive a refund of fees of £1,350 in 2015. He says he's checked with his bank and no such sum was paid in that year. But Mr W has misunderstood the position; where a refund of fees is made by a lender, the fees (and any associated interest) are removed from the account as if they'd never been applied, not paid to the customer as a lump sum – unless the loan has already been redeemed (which is not the case here).

interest rate: Kensington has provided details of the interest rate applied to the loan. It is a variable rate of interest, currently 9.80%. This isn't excessive for a second charge secured loan. And, in any event, I don't have any power to tell Kensington what rates it should charge to customers. That's a matter for its own commercial operations.

I've noted what Mr W has said about the rate he thinks he would have been given by his own bank. But this is anecdotal and isn't based on any actual assessment of lending criteria, because Mr W didn't ask his bank for a loan.

It's also unrealistic to compare interest rates offered by high street banks to those offered by sub-prime lenders, as they operate in different markets and price their products accordingly. So I take Mr W's comments as being made with the benefit of hindsight – he took out the

loan at the price offered by Money Partners. Mr W probably wished he hadn't once he thought he might have found a lower rate elsewhere (although there's no firm evidence to support this).

variation of the loan: Mr W says that his dissatisfaction with the terms of the loan had been made clear to Kensington from the outset. He's sent me a letter he wrote to Kensington on 10 September 2008 which he says proves this.

I've read that letter carefully. Mr W does indeed say that he's dissatisfied with the loan conditions. But Mr W doesn't say anywhere in that letter that the terms Kensington was applying to his loan aren't the ones he'd agreed to when he took out the loan in 2005.

In the letter Mr W sets out his borrowing history from 2002 onwards, including the secured loan in 2005. But at no point does he mention that new terms were negotiated with the broker before the loan completed. Or that he only agreed to the loan going ahead on the basis of those new terms.

Given the whole crux of this current complaint is that Mr W claims new terms had been negotiated in 2005 I'd have expected him to have said to Kensington in 2008 "the conditions you're applying to this loan aren't the ones I agreed to". That he did not suggests that there were no new terms.

In my provisional decision I noted that Mr W had given several different versions of events in relation to how he said the loan conditions had been varied. He'd said at different points in his complaint:

- that the existing agreement (signed on 20 August 2005) had been altered or amended to incorporate new terms;
- that he'd signed a new, revised agreement containing these renegotiated terms;
- that he'd given the broker verbal notice of withdrawing from the loan;
- that he'd provided the broker with a written notice withdrawing from the loan.

In response, Mr W says that this is "*semantics*" and that there is no discrepancy in what he's said. But I have to disagree. There is a fundamental difference in Mr W saying that the changes he claims were agreed were added to the existing loan agreement dated 20 August 2005 and his alternative contention, which is that he signed a new agreement. In fact, Mr W has now provided me with another scenario, which is as follows.

Mr W now says that, as far as he is concerned, as long as his signed loan agreement remained in his home, a contract did not exist. He says he recalls signing a new document in October 2005 during a visit from the broker.

But Mr W maintains that the original signed loan agreement dated 20 August 2005 didn't leave his possession until he gave it to the broker following another meeting between them. He now says this took place in November 2005 – several weeks after the loan completed and after it had been transferred to Kensington.

Mr W says that he was told by the broker that the 20 August 2005 agreement was to be replaced with an amended agreement that was discussed between them during this meeting in November 2005. "*It seems that the original, knowingly cancelled agreement [the 20 August 2005 document] was then sent unaltered to Money Partners who immediately transferred it to Kensington*".

But this latest version of events doesn't align with the facts Money Partners would not have released £12,000 to Mr W unless the signed agreement was in its possession. It's standard industry practice with second charge lenders that the money is only released once the lender holds the signed agreement.

So I am unable to conclude that Mr W still had the agreement he signed on 20 August 2005 in his possession in November 2005. Nor do I consider it possible that the loan would have completed on 12 October 2005 without Money Partners holding the signed agreement. And when the loan was transferred to Kensington immediately after completion, Kensington was then in possession of the 20 August 2005 signed agreement.

Taking everything into account the only version of events which stands up to scrutiny is that the unaltered loan agreement signed by Mr W on 20 August 2005 is the only one that existed. The loan completed on the terms set out in that agreement on 12 October 2005, and was transferred to Kensington immediately afterwards.

Mr W has provided no detail at all about the amended terms he claims to have negotiated with the broker, other than to say these were "*flexible*". Mr W has given us several different narratives describing in considerable detail his contact with the broker over a period of several months between June 2005 and November 2005. I don't doubt Mr W had a number of conversations with the broker.

But given that Mr W has provided very detailed accounts of what he says happened in 2005, I'd have expected him to have been able to supply at least *some* detail about how the original agreement had been amended. For example, did the new terms include payment holidays? Was there to be a period of suspension of interest? Were fees and charges to be suppressed? What would be the trigger for a concession to be applied?

I cannot overlook the absence of detail about what is the most crucial aspect of this complaint – the 'new' terms which Mr W says Kensington must apply to his loan. It simply does not make sense that Mr W can recall the detailed circumstances surrounding his meetings with the broker 13 years ago, but isn't able to provide any detail about what was allegedly agreed.

So in all the circumstances, I'm unable to find new terms were agreed with Money Partners to which Kensington is, or should be, bound. The agreement signed by Mr W on 20 August 2005 is the only contract which applies to this loan.

arrears handling: I've reviewed the way in which Kensington has dealt with arrears on the account. I think there has been difficulty in managing the account because Mr W doesn't believe he should be bound by Kensington's terms, but only by the (unspecified) terms he says he arranged in 2005. But overall I think Kensington has dealt with the arrears as it's required to do.

Payment arrangements are subject to review, and I wouldn't expect Kensington to continue a payment arrangement indefinitely. It's entitled to review the arrangement periodically and to ask Mr W to provide updates on his financial circumstances so it can give fair consideration to allowing any further concession on the account.

I'm not persuaded to change the conclusion I reached in my provisional decision – which is I don't think Kensington has applied charges which it's not entitled to do, or in a way in which is unfair.

conclusion: To summarise:

- I'm satisfied there are no special terms which apply to this account. The loan agreement signed by Mr W on 20 August 2005 is the one which applies to this loan;
- the interest rate is not excessive or unreasonable for this type of loan;
- the way Kensington has dealt with the arrears has been fair and reasonable;
- the charges it has applied to the account are in line with its tariff and have been fairly applied.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 December 2018.

Jan O'Leary
ombudsman

copy of provisional decision of 30 August 2018

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Mr W has also complained that Kensington hasn’t worked with him in relation to payment arrangements, and he’s unhappy about arrears fees applied to his account. An investigator looked at this but didn’t think Kensington had done anything wrong.

my provisional findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. I’ve condensed the background to the complaint into somewhat less detail than it’s been presented to us by Mr W. No discourtesy is intended by this. I confirm I’ve read and considered everything he and Kensington have provided. But I’m not required to address each and every point that’s been made; instead I will concentrate on what I consider to be the main issues in the complaint.

I will also not be issuing a decision on anything that’s already been the subject of a previous final decision, or which has been settled between Mr W and Kensington after Mr W’s previous complaint in 2015.

I’m aware that many of the events complained about happened outside the time limits set out in our rules. Kensington has confirmed that we have its consent to consider any matters which might otherwise be time-barred.

Money Partners and Kensington: Mr W has made detailed points about the connection between Money Partners (the original lender) and Kensington.

The sale was carried out through a broker and the loan agreement was with Money Partners. But the loan agreement says on its face that the loan was likely to be transferred to Kensington. That in fact happened – on the day of completion in October 2005

I’m aware that Money Partners and Kensington were closely associated. According to the trade press when Money Partners was established, it was done so to enable Kensington to acquire loans through a different brand.

The immediate transfer of loans to Kensington was the business model both companies operated by. But I understand that this was discretionary, and it was up to Kensington to choose which loans to take on. It chose to take Mr W's loan.

I'm satisfied Kensington wasn't responsible for the underwriting or the lending decision. It wasn't party to the transaction until after completion. But the loan was granted by a company established to acquire loans for Kensington. It was always contemplated that it would be acquired by Kensington immediately after it completed. Even though the loan agreement said that the lender was Money Partners, this was and was always intended to be a Kensington loan. The loan agreement made clear it would become a Kensington loan. The transfer – contemplated from the start – transferred rights and obligations.

I must clarify that there is nothing wrong in this business model. Both Kensington and Money Partners were allowed to operate in this way and nothing they did in relation to the granting or acquisition of loans breached regulations.

Mr W has pointed out that senior officers at Kensington went to work for Money Partners; but so did senior officers from the sub-prime lender which owned Mr W's first mortgage in 2005, along with people from other sub-prime lenders. There is nothing untoward in a staff member from Kensington taking up a new role with Money Partners.

who granted the loan? The lender was Money Partners, and so the lending decision, administration and underwriting of the loan before it was transferred to Kensington was carried out by that business. Money Partners was a discrete business from Kensington. Its operations were ring-fenced from Kensington. It is no longer trading. I do not have access to its files.

So although I will make observations on the issues Mr W has raised relating to Money Partners, I can't make any findings that will be binding on Kensington about anything that happened before it took over the loan after completion on 12 October 2005.

Once Mr W's loan completed, it was transferred to Kensington, along with all the rights and obligations contained in the contract. And this leads on to the main issue Mr W has concerns about. He says the loan was cancelled and replaced with another, but that this doesn't seem to have been implemented either by Money Partners on completion or Kensington when the loan was transferred to it.

So Mr W is concerned that the loan transferred to Kensington on 12 October 2005 wasn't the new, amended, loan he'd re-negotiated through the broker, but the old, unsatisfactory, agreement that was set out in the document he'd signed dated 20 August 2005 but which he says he later cancelled.

was the original agreement cancelled, amended or replaced? The loan was taken out with Money Partners. I've already explained that, notwithstanding the connection with Kensington, Money Partners was a separate business. So the terms on which the loan was granted – and whether or not there was any amendment, cancellation or replacement of the original loan – don't fall within the scope of this complaint.

But Mr W's point is that he thinks Kensington should be bound by terms he says were more flexible, and which formed the basis of a revised agreement which he signed to replace the agreement dated 20 August 2005. So in order to determine this part of Mr W's complaint against Kensington, I need to consider whether or not the loan agreement was cancelled, as alleged by Mr W.

Mr W's loan is regulated by the Consumer Credit Act 1974 ("the Act"). (Since March 2016, regulatory changes have come into effect, but these don't have any bearing on the legislation that governed this loan in 2005.) I've looked at the provisions of the Act as it applied in 2005. The relevant section is s.58. This is how it looked in 2005.

58. Opportunity for withdrawal from prospective land mortgage.

- (1) Before sending to the debtor or hirer, for his signature, an unexecuted agreement in a case where the prospective regulated agreement is to be secured on land (the "mortgaged land"), the creditor or owner shall give the debtor or hirer a copy of the unexecuted agreement which contains a notice in the prescribed form indicating the right of the debtor or hirer to withdraw from the prospective agreement, and how and when the right is exercisable, together with a copy of any other document referred to in the unexecuted agreement.*

The evidence shows that the unexecuted (unsigned) copy of the agreement was given to Mr W on 27 July 2005. The relevant provision in the agreement says:

“Under the Consumer Credit Act 1974 you should have been given a copy of this agreement at least seven days ago so you could consider whether you wanted to go ahead. If the creditor did not give you a copy of this agreement he can only enforce it with a court order.”

After the seven-day period had expired, Mr W signed the agreement in the presence of a witness, confirming he'd received the agreement more than eight days earlier.

Mr W is adamant that *after* he signed the agreement on 20 August 2005, he gave the broker a notice of cancellation during the '14-day cooling-off' period. Mr W says that, before the loan completed in October 2005, the broker put forward new, flexible, terms which were embodied in a replacement loan agreement, which Mr W signed. But after the loan completed, Mr W now says that he assumes Money Partners wasn't sent the revised agreement, only the original one from 20 August 2005.

Mr W has asked to see all notes, correspondence, telephone logs, etc., between 20 August 2005 and 12 October 2005 (when the loan completed), as he believes these will prove that he'd cancelled the original loan during the 'cooling-off period'.

The relevance of this to Kensington is as follows: Mr W says that, because Kensington took on all the rights, duties and obligations of the loan from Money Partners, then it must also be bound by the flexible terms Mr W says were negotiated with Money Partners through the broker, and embodied in the 'amended agreement' which Mr W says he signed.

But I have some difficulty with the arguments Mr W is now making about this.

First of all, the Act specifies the types of credit agreements that can be cancelled during a 14-day cooling-off period – these are called 'cancellable agreements' and are described in s.66 of the Act. Secured loans are not cancellable agreements – they are specifically excluded from the cancellation provisions by virtue of s.67(a) of the Act. So there was no '14-day cooling-off period' during which the loan could be cancelled.

Mr W may well have had second thoughts about going ahead with the loan after he signed the agreement. I've read what he's said about being pressurised by the broker to complete the loan. And it's possible that Mr W was misled by the broker about his right to cancel and that there was a 'cooling-off period'. But if he was, then that's not something for which Kensington can be held responsible. From the evidence I've seen, the broker complied with the requirements of s.58 of the Act, by giving Mr W an advance copy of the agreement, which he signed, after expiry of the 8-day period specified in the Act.

Taking all this into account, I'm not persuaded there was any provision in either the agreement or the Act to cancel the agreement arising from any 14-day cooling off period.

I also have some hesitancy in accepting Mr W's contention that he says he cancelled the original agreement and signed an amended one which included the flexible terms he wanted.

I've read all the correspondence on Mr W's previous complaint file from 2014, and the limited documents that are still available from his 2011 complaint. From these I note that the first time Mr W mentions that he'd been unhappy about the terms of the original loan was in a letter sent to Kensington on 22 August 2014. It is worth quoting exactly what Mr W said to Kensington about this.

As a result of documents recently supplied by the FOS it seems that the statement of my income was altered. Apart from some monies owing as a result of my previous work the only income I had at the time was a government pension of £90.00 per week. On this I was expected to repay a mortgage and the Kensington loan amounting to over £42,000.00. Although I had signed the agreement, I informed the broker that I realized that the agreement as it stood was unsustainable, I would therefore not return my copy of the contract and wished to pull out of the loan. This was in August 2005.

This decision resulted in a frenzy of phone calls from the broker and promises of flexibility of the loan conditions and I was eventually coerced into accepting the loan.

So from this letter, I make the following observations:

- Mr W said he told the broker in 2005 that he wanted to pull out of the loan. This is not the same as giving the broker a written notice of cancellation during a 14-day cooling-off period – which is what Mr W now says happened.

- There is also no mention of any ‘amended agreement’ which Mr W says he signed and returned to the broker in 2005.

In this current complaint, in his initial letter to us dated 12 April 2017, Mr W says that he “*assumed any alteration in the loan agreement to accommodate this [flexibility] would be transferred to the new lender...*”.

Mr W only told us that he’d “*accepted a revised loan agreement*” on 10 May 2017. In a letter to us dated 5 January 2018 Mr W expanded on this, and said that he assumed “*... that the loan purchased from Money Partners was correctly and honestly represented, with amendments and additional documents appertaining to the loan, carefully inspected and verified...*”.

It was not until 6 April 2018 that Mr W said he’d cancelled the loan with the broker during “*the cooling off period*”.

On 6 July 2018 Mr W expanded on his complaint, repeating the history of the sale by the broker. But he doesn’t mention signing a new agreement. Instead Mr W talks about amendments having been made to the original agreement.

On 10 July 2018 Mr W tells us: “*the original loan had been cancelled and replaced by an amended loan agreement*”.

So there are discrepancies in what Mr W is saying. On the one hand, he has said there was a new agreement which he signed; but on the other hand, he refers to amendments to the existing agreement.

Mr W has also said that he simply told the broker he didn’t want to go ahead. But he’s also said he gave him a written notice.

I also note that Mr W hasn’t specified what amendments he claims were made to the original agreement or the terms and conditions of the loan.

After considering carefully what Mr W has said about this, and after looking at the available evidence, I’m afraid Mr W’s contention that the loan agreement was either cancelled, revised or amended simply doesn’t stand up to scrutiny. Mr W’s evidence about what he says happened is contradictory.

I also cannot overlook that it wasn’t until 22 August 2014, in his letter to Kensington – and almost nine years after the loan was taken out – that Mr W first mentioned wanting to pull out of the loan in 2005. I find it difficult to accept that if, as Mr W contends, the loan had been set up incorrectly from the start on terms he was unhappy with, that he’d have left it nine years to say anything about it.

And it wasn’t until three years after that, in 2017, that Mr W first mentioned a ‘revised loan agreement’, and not until 2018 that he further expanded on this to say he’d cancelled the agreement during “*the 14-day cooling-off period*” (which, as I’ve explained above, didn’t apply to this loan in any event) by giving a notice to the broker to that effect.

So I have some difficulty in accepting Mr W’s position that the loan was re-negotiated prior to October 2005. I’d have thought that, within a few months of completion Mr W would have realised it wasn’t on the terms he thought he’d agreed to, and would have said something then. But he said nothing about this to Kensington for almost nine years.

In the circumstances, I’m unable to conclude that there was any renegotiated or amended agreement between Mr W and Money Partners. This means that the original loan agreement dated 20 August 2005 is the one which applies to this loan, along with the original terms and conditions.

was the direct debit cancelled? Mr W signed the direct debit mandate in June 2005. He says it was cancelled, because the agreement was cancelled. But I’ve seen nothing in the file to support this contention.

I can see that Kensington wrote to Mr W on 2 December 2005 because the direct debit had been rejected due to insufficient funds. Kensington then said it would make a second request for payment, on or around 11 December 2005. On 15 December 2005 Kensington wrote to Mr W again, because the direct debit had been cancelled.

I know Mr W is steadfast in his belief that the broker negotiated new terms with Money Partners. It is possible the broker told Mr W that’s what he’d done. But that isn’t something that Kensington was either a party to or is responsible for. It took over the loan as an existing entity, on the terms of the agreement signed by Mr W dated 20 August 2005.

In the circumstances, I'm satisfied that the terms of the loan have not been varied, as suggested by Mr W, or at all – other than the payment arrangements agreed between Mr W and Kensington during the course of the loan.

the interest rate: This is a secured loan, not a regulated mortgage contract. At the time of taking it out, Mr W already had a sub-prime first mortgage on his property, so he was already outside the customer base of mainstream mortgage lenders.

The interest rate reflects that this is a secured loan. I am told that the current interest rate is 9.9%. (I would ask Kensington to confirm the current rate.) That isn't excessive for this type of loan. It is not, as Mr W's MP has suggested, "*immoral*" for Kensington to apply interest at this rate to Mr W's loan.

Mr W's MP has suggested Kensington should apply the lowest interest rate offered on its residential mortgage book to Mr W's loan. This would appear to be a rate of 3.14%. But Kensington isn't under any obligation to do this. Kensington only offers residential mortgages on loans exceeding £25,000, and with a maximum age limit of 75. There is no basis upon which it would be fair or reasonable to order Kensington to apply an interest rate which applies to regulated mortgage contracts to Mr W's secured loan and for which he does not meet the criteria.

payment arrangements and arrears-handling: I agree with the conclusion reached by the investigator that Kensington's handling of Mr W's arrears has been fair. I'm not persuaded that fees have been charged that are either outside Kensington's tariff of charges or which have been unfairly applied.

further information: On the basis of what I've seen so far, I'm unable to uphold the complaint. But before issuing a final decision, I need both parties to provide me with some further information:

Mr W – I would like Mr W to provide me with full details of the amendments to the original agreement which he says were negotiated between the broker and Money Partners. I would also like Mr W to clarify why he waited nine years to raise the issue of the amended, cancelled or revised agreement with Kensington.

Kensington – I would like Kensington to provide the following:

- the current interest rate on the secured loan;
- the payment history for the last 12 months;
- any records, documents, call notes, etc. it might hold (if any) between Money Partners and the broker, from June 2005 to October 2005.

Both parties are, of course, free to provide any other information in addition to that requested above.

my provisional decision

Subject to anything further Mr W or Kensington Mortgage Company Limited may wish to say, my provisional decision is that I don't uphold this complaint.

Jan O'Leary
ombudsman