

The complaint

Mr L complains that Kensington Mortgage Company Limited have treated him unfairly in relation to his mortgage account.

Specifically, he complains that Kensington pursued legal action to take possession of the house inappropriately, which resulted in charges being added to the mortgage account unfairly. He also complains that whilst Kensington have refunded the insurance premiums they'd charged over the years, they haven't refunded the interest that accrued on those premiums.

What happened

Mr L and the late Mrs L took out an interest only mortgage in 2006 for 12 years, the term of which ended in 2018.

In 2011 Mr L was removed from the title deeds for the property, and so the house moved to Mrs L's sole ownership. The mortgage continued in joint names.

In May 2020, Mrs L passed away. In January 2022 Kensington started legal action to take possession of the property. Mr L told Kensington that Mrs L had passed away in 2020 and he was looking at his options to re-mortgage. The legal action continued in the background and a court hearing date was set for 5 August 2022.

The hearing was adjourned, and the court ordered that the claim be struck out if no request to restore was received by 4 August 2023. The costs incurred by Kensington for pursuing legal action were added to Mr L's mortgage account.

In September 2022 Mr L complained. He didn't think it was fair for Kensington to pursue legal action when they did, and he also didn't think he should be liable for their costs, especially when the claim was struck out. He also complained about insurance premiums being added to the account each month which he said he discovered when preparing for court. He said he and Mrs L had their own buildings insurance cover in place so wanted the premiums refunded.

Kensington issued a final response letter in relation to the insurance premiums being added. They said there was no evidence Mr L and Mrs L had their own cover in place, and if Mr L could provide that evidence they would consider a refund. Mr L responded and provided evidence to show the property had been insured. Kensington sent a cheque to Mr L for £2,960.34 in October 2022 to refund the premiums charged.

Mr L remained unhappy as he didn't think the refund for the insurance premiums covered the full amount paid, and also didn't include the interest that he said would have accrued on the premiums over the years. He also remained unhappy about the legal action that Kensington had taken. He brought his complaint to our service.

Kensington said that Mr L's complaint about the insurance premiums charged more than six years ago had been made outside the time limits, and they didn't give our service consent to consider it. They also explained to us that the refund may have been less than Mr L was

expecting as they had already issued a refund of £304.18 in August 2011. They did however note that their calculation had been £15 short, and so sent a cheque for that amount to Mr L.

Our Investigator looked into things, and explained that he didn't think Kensington needed to do anything more to put things right. Mr L disagreed, and asked for the complaint to be referred to an Ombudsman. I issued a decision on 19 February 2024 which said our service only had the power to consider the following parts of Mr L's complaint:

- Kensington added monthly insurance premiums to his mortgage account unfairly from September 2016 onwards, and these accrued interest.
- Kensington refunded the premiums to him by cheque but have kept them on the balance so they continued to accrue interest even after the refund.
- Kensington took legal action to repossess the property unfairly.

After considering the merits of Mr L's complaint as set out above, I issued a provisional decision on 21 February 2024. This is what I said.

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

The insurance premiums

Kensington have refunded all the premiums they charged Mr L for buildings insurance from 2008 onwards. So what I need to decide, is whether Kensington need to do anything further in light of Mr L's complaint about the interest that he says would have accrued on those premiums. As explained in my previous decision, I will only be considering this part of Mr L's complaint from September 2016 onwards, as the complaint about the period before then is out of time.

Kensington have said that no interest was charged on the premiums because they were charged and collected in the same month. They've said interest would only have been charged if Mr L hadn't made his monthly payment. When Kensington charged Mr L and Mrs L for the buildings insurance each month, they increased their monthly mortgage payment so that it covered the interest on the mortgage as well as the premium. So when the monthly payments were made on time, the premiums did not attract interest as they were paid in that same month they were added to the account.

However, I can see from December 2016 onwards Mr and Mrs L stopped making payments themselves, and the only contributions made to the mortgage from that point until the premiums stopped being charged in 2018 were from the Department for Work and Pensions, and those payments were not covering the full monthly interest payments. As a result, the premiums would have attracted interest from December 2016 as they were being charged to the mortgage but went unpaid.

Kensington have chosen to refund the premiums to Mr L as a gesture of goodwill. Whilst he has now been able to evidence that he had his own buildings insurance in place over the years, he had not provided that information to Kensington each year when requested. So I'm not persuaded Kensington were acting unfairly by charging the premiums in the first place. It was a condition of Mr L and Mrs L's mortgage offer that they had buildings insurance in place, and so as Kensington didn't have evidence of that, they protected their own interest in the property by arranging it themselves. I think that was reasonable.

Kensington gave Mr L and Mrs L the information they needed in order to stop those charges being added to the account in the letters sent in 2016 and 2017. The letters requested evidence that insurance was in place, and what would happen if that evidence wasn't provided. Follow up letters were also sent as Kensington hadn't received a response.

I know Mr L disputes whether those letters were actually sent or not, but as Kensington have provided them along with the other notes from Mr L and Mrs L's account, and the letters were correctly addressed, I'm persuaded on balance that it's likely they were sent. It was for Mr L and Mrs L to act on those letters if they didn't want to be charged by Kensington for buildings insurance. As a result, whilst I agree with Mr L that additional interest was charged on the mortgage as a result of the premiums when they weren't paid on time, I'm not satisfied that was a result of anything Kensington did wrong. Because of that, whilst I appreciate it will come as a disappointment to Mr L, I won't be directing Kensington to refund the additional interest charged.

The refund of the premiums

When Kensington agreed to refund the premiums to Mr L, they did so by sending him two cheques. On 17 October 2022, Kensington credited £3,043.43 to Mr L's mortgage account. The same day, they sent him a cheque for £2,960.34, and debited that amount from the mortgage. They later sent him another cheque for £15, which Mr L asked them to cancel as he wanted the money credited to the mortgage instead.

Mr L complains that as Kensington sent him the refund by cheque, rather than crediting the mortgage account, the amount has stayed on the balance and accrued interest. But I'm satisfied that as Kensington credited Mr L's account before sending him the cheque, the refunded amount hasn't been added to the mortgage balance.

I appreciate Kensington have not explained this very clearly to Mr L, nor have they explained the discrepancy between the amount they credited to the account and the amount they refunded to Mr L (£68.09), but I'm satisfied Mr L has not suffered a financial loss as a result of the way Kensington have administered the refund. I appreciate Mr L may have wanted to use that refund to reduce the mortgage balance, but there was nothing preventing him from making a manual payment to Kensington after receiving and cashing the cheque. Or, as he did for the second refund, he could have asked them to cancel the cheque and credit the account instead.

Overall whilst I think Kensington could have explained things more clearly to Mr L, I'm not persuaded he's lost out financially as a result of the way the refund was made to him.

Kensington taking legal action unfairly

Mr L's mortgage term ended in 2018. There were a few conversations between Kensington and Mr L in the following years about the mortgage payments, and in May 2019 Kensington advised Mr L to speak to an Independent Financial Adviser about his options to repay the mortgage. It was agreed that Mr L would call back when he'd had a chance to do that. After numerous failed contact attempts during 2020 and 2021, Kensington instructed solicitors in January 2022 to start legal proceedings as they had not heard from Mr L about his plans to repay the mortgage.

The term had ended in 2018, Kensington had given Mr L space to consider his options for repayment, but they still hadn't heard from him about a plan over three years later. I can see from the contact notes Kensington tried to call Mr L several times during that period. Most calls went unanswered but sometimes Mr L did answer and said he would call back but never did. Overall, based on what Kensington knew at the time, I'm persuaded it was reasonable for them to start legal action when they did.

Mr L called Kensington in April 2022 after receiving letters about the legal action. Mr L says he told Kensington then that Mrs L had passed away. Then it was on 6 May a more meaningful conversation about plans for the mortgage took place. Mr L said he had been looking at his options and ideally would like a term extension. If that wasn't possible, he would look to sell or re-mortgage the house. He said selling would take longer as the house would need some work doing to it. He said he'd applied for probate. Kensington said they would work with him as long as the plans were progressing, and they were kept updated.

On 28 June Mr L told Kensington that he'd been approved for a lifetime mortgage and was arranging a valuation of the property. On 4 August the solicitors acting for Kensington in the legal proceedings told Kensington that they had just discovered Mrs L had passed away and so the hearing should be adjourned. The solicitors did write to Mr L to tell him the hearing had been adjourned, but as it was set for the next day all parties still attended and the claim was struck out by the court.

I've said that I'm persuaded it was reasonable for Kensington to start legal proceedings when they did, but I'm not persuaded they were acting fairly or reasonably when they continued to pursue the action once they'd learned that Mrs L had passed away, and Mr L was exploring his options to repay the mortgage. Kensington told Mr L at that point they were willing to work with him to try and find a solution, so I'm not persuaded it was reasonable for them to continue to pursue legal action in the meantime.

It also seems that Kensington did not tell their solicitors that Mrs L had passed away, and so all of the court documentation was still listing her as a defendant of the claim. On 6 May Kensington told Mr L they would work with him as long as his plans were progressing. Following that conversation Mr L did keep Kensington informed about his lifetime mortgage application and his plans to repay the mortgage. I think it would have been reasonable for Kensington to put a stop to the legal action at that point as Mr L was clearly taking steps to sort out probate and find a way to redeem the mortgage. Whilst I appreciate it had been some time since the mortgage term had ended, I'm not satisfied legal action was a last resort for redeeming Mr L's mortgage at that point. He had begun to engage with Kensington and had explored plans for redemption.

Mr L wants Kensington to refund all the legal fees to his mortgage balance. The terms and conditions of Mr L's mortgage state that the borrower will pay any costs incurred by the lender in exercise of its powers under the contract. I'm satisfied that the costs incurred by Kensington for taking legal action up to the point they learned of Mr L's plans were incurred reasonably. And so I'm not persuaded those should be refunded.

However, as I don't think Kensington should have continued with that action beyond 6 May for the reasons I've explained, I'm not persuaded it was fair of them to pass the costs associated with that action on to Mr L. I have seen the invoices for the legal work carried out and I can see that Kensington paid their solicitors £201.60 for the legal work completed after 6 May. I'm satisfied that amount should be refunded to the mortgage account, along with the interest that was subsequently charged on that amount as it was added to the mortgage balance.

It's clear that Mr L suffered considerable distress and inconvenience as a result of having to prepare for, and attend, a court hearing that I'm satisfied should not have taken place in August 2022. He was worried that he was going to lose his home, despite having positive conversations with Kensington in recent months about his plans to repay the mortgage. He had been dealing with probate for his late wife, and spent a lot of time and effort going through the court papers in order to prepare for the hearing. Mr L has a history of serious mental health problems and I accept this would have been a very difficult and daunting time for him. As a result, I'm persuaded that Kensington should pay Mr L £750 to recognise the impact their actions had on Mr L.

So in summary, I currently intend to decide that Kensington should do the following to put things right for Mr L:

- Refund £201.60 to the mortgage account (if the mortgage has not yet been repaid).
- Refund any interest charged on that amount to the mortgage.
- If the mortgage has now been repaid – refund the above amounts to Mr L directly, with the addition of 8% simple interest* on that amount calculated from the date the mortgage was redeemed to the date of settlement.

- Pay Mr L £750 for the distress and inconvenience caused.

*Interest is at the rate of 8% a year simple. If Kensington considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr L how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."

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.

Mr L and Kensington both responded to my provisional decision to say they accepted what I'd said. As a result, I see no reason to depart from my findings as set out in my provisional decision.

Putting things right

Kensington have told us that Mr L has redeemed his mortgage. As a result, Kensington should do the following to put things right for Mr L:

- Refund £201.60 directly to Mr L.
- Refund the interest that was charged on the above amount from the date each legal fee was added to the mortgage account, to the date the mortgage was redeemed.
- Pay Mr L 8% simple interest* on the above amount calculated from the date the mortgage was redeemed, to the date of settlement.
- Pay Mr L £750 for the distress and inconvenience caused.

*Interest is at the rate of 8% a year simple. If Kensington considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr L how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint, and direct Kensington Mortgage Company Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 April 2024.

Kathryn Billings
Ombudsman