

The complaint

Mr L complains that after his interest only mortgage ended, Kensington Mortgage Company Limited kept taking monthly mortgage payments. Mr L said Kensington had no right to those, its only right was to evict him, and he wanted back the money he had paid.

What happened

Mr L had an interest only mortgage on his home, with Kensington. The term of the mortgage expired on 1 November 2018, and the capital Mr L borrowed was then due to be repaid. But Mr L didn't pay it back. He told us he kept paying the interest on the borrowing, each month.

Mr L says he doesn't accept Kensington had a right to continue to charge interest, after the term of this mortgage ended. Mr L says the contract he had with Kensington ended on 1 November 2018. Mr L accepts that Kensington could then have sought repossession of the property after that date, because he didn't pay back the capital. But he says Kensington had no right to extend the contract, and so there was no legal agreement in force which meant he had to pay interest until he did redeem the mortgage.

Mr L wants Kensington to pay back all the interest he has paid, since November 2018.

Mr L also asked us to look at three complaint points that Kensington had upheld, and increase the compensation. He said he'd been offered £100 in total, and he thought £100 per point upheld would be more reasonable.

Kensington has accepted that it provided poor service on occasion to Mr L. It upheld his complaint that it didn't properly recalculate Mr L's monthly payment, after he made a substantial payment towards the capital owed. And it said it issued a letter on 13 March 2023, which incorrectly told Mr L his mortgage was in arrears. Kensington also accepted it provided poor service on a call on 9 March, which was a missed opportunity to resolve issues earlier. Kensington apologised for these things, and offered Mr L £100 to make up for that.

But Kensington won't just pay Mr L back all of the interest he has paid it since November 2018. It said Mr L still hadn't repaid the capital owed, and until he did that, his mortgage and the monthly payments due under it would continue.

Our investigator didn't think this complaint should be upheld. He said Mr L was supposed to make full payment of the outstanding capital by November 2018, but the mortgage hadn't been repaid. So Kensington continued to charge interest, at the same rate as previously charged, and in line with the mortgage agreement. He said in circumstances where Kensington hadn't been repaid, it was fair and reasonable for Kensington to keep charging interest on the outstanding debt. He didn't think it would be reasonable for Mr L to keep the benefit of the mortgage funds (which here, are in the property Mr L bought) but not pay interest on the outstanding debt.

Our investigator said Kensington had accepted it made a mistake when Mr L made a large payment towards the capital owing. And Mr L was then given misleading information on the phone, when he called to resolve this. But our investigator said that Kensington had acted to put things right, and ensured no negative impact was recorded on Mr L's credit file.

Our investigator also noted that Kensington had apologised for sending a letter telling Mr L he was in arrears. That was also a mistake. Our investigator noted that it would have been frustrating for Mr L not to be able to speak to the right department when he rang Kensington.

Our investigator thought that Kensington's offer of £100 for these mistakes was a fair amount of compensation in the circumstances of this complaint.

Mr L didn't agree. He said the contract didn't give Kensington the right to continue the mortgage beyond the end date of 2018. He said it could, and should, have taken action for breach of contract and repossession right away, or agreed a new contract with him. But he said it did neither. He said now he wants his money back.

Mr L said the only benefit to him of staying in his home after November 2018 was that he could decide when he sold the property, and downsized. He said he had now redeemed the mortgage, although he said he had problems there too. He did still want Kensington to repay all the interest charged since 2018.

Our investigator replied to say that our service provides a free, impartial alternative to the courts, and he couldn't say whether Kensington had a legal right to charge interest or not. But he had considered whether it was fair for it to charge interest up until the date that the mortgage was repaid, and he thought it was. He didn't think it was unfair for Kensington not to have repossessed Mr L's property right away. And he said Mr L could have sold the property himself at any time, if he wanted the interest payments to end, and to avoid any of the extra costs of a repossession action. Our investigator also said he thought Kensington had addressed the issues at the end of Mr L's mortgage.

Because no agreement was reached, this case was passed to me for a final decision.

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 reached the same overall conclusion on this complaint as our investigator.

Mr L says if he doesn't repay the capital owed at the end of the mortgage term, then there's just no legal right for Kensington to do anything other than seek possession of the property. And because it didn't do that, Mr L thinks it should pay back all the interest that he's paid, while he continued to live in his home, before he redeemed this mortgage. Mr L said if we disagreed, then we should point to the bit in his mortgage contract where it said otherwise.

My role as an ombudsman does include having regard to the relevant law, as well as a number of other considerations set out in the rules which govern our service. But those considerations aren't paramount in reaching my decision. Instead, my overarching duty is to *"... determine a complaint by reference to what is, in [my] opinion, fair and reasonable in all the circumstances of the case."*

When repayment of the capital borrowed under this mortgage fell due, Mr L didn't pay it. He kept on living in his home, and kept on paying his mortgage. So I do think Mr L retained the

benefit of the borrowing in this case (which, as our investigator noted, was invested in the house he was living in). I don't agree that Mr L derived no benefit from continuing to live in his own home, for over five years after the capital repayment on his mortgage was due.

And, like our investigator, I do not think it would be fair now for me to ask Kensington to pay back all of the interest it continued to charge on Mr L's outstanding borrowing, during this time. I think that would be incompatible with my duty to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of this case.

Mr L also said he'd complained to Kensington about other service failings, including a mistake over his monthly repayment after he'd reduced the capital debt, poor service on a call, and sending him an arrears letter by mistake. Mr L didn't think £100 was enough compensation for that.

I understand Mr L has found Kensington frustrating and difficult to deal with, particularly as he says he couldn't just get through to the right department. But I note that Kensington has apologised for the above problems, which appear to have been at least partly a result of Mr L making a large overpayment towards the end of the month, which Kensington's systems hadn't caught up with before the next payment was due.

I can see that Kensington has taken steps to put things right, including ensuring Mr L's credit file wasn't marked, and reinstating a discount for the direct debit, after Mr L cancelled this. It also offered £100 as an apology. I do think the offer Kensington has made provides a fair and reasonable offer, and I'll ask Kensington to pay that now, if it hasn't done so already.

Mr L mentioned he also had difficulties since, including with the recent redemption of his mortgage. He shared with us a complaint response letter dated 7 December 2023. That letter upheld Mr L's complaint that he'd been wrongly informed that a court date was pending, and said legal costs shouldn't have been added to his redemption amount. But Kensington had returned the overpayment by cheque. Kensington didn't uphold Mr L's complaint that an agent hung up on him, it didn't think that was what happened, and the agent did try to call him back. And whilst it was sorry if Mr L had found its actions upsetting, it didn't think it and tried to bully him.

Mr L said he didn't want us to do anything about this, but he did want us to check if £50 was sufficient compensation for this too. But this is not the complaint that Mr L brought to our service, and I have none of the details I'd usually expect to see from Kensington about what happened, in order to reach a decision on whether this offer of compensation is fair.

I don't think it would be appropriate now to delay the resolution in this case, and delay the payment of £100 to Mr L, by pausing to investigate these new issues which Mr L has only asked us about recently. So I make no comment on whether that offer of £50 is fair. Mr L can ask us to look into that issue separately, if he wishes.

I understand that Mr L may be disappointed by my decision, but on the issues I have considered here, I don't think Kensington has to pay more than it has already offered.

My final decision

My final decision is that Kensington Mortgage Company Limited must pay Mr L the sum of £100 which it previously offered, if it has not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 June 2024.

Esther Absalom-Gough
Ombudsman