

The complaint

Mr and Mrs D complain about the way that Kensington Mortgage Company Limited trading as Acenden has administered their mortgage.

What happened

In 2007, Mr and Mrs D took out a second charge mortgage with Southern Pacific Personal Loans for £38,000 over 30 years. The mortgage is administered by Acenden.

The mortgage fell into arrears in 2008 and has remained in arrears since.

Mr and Mrs D complaint is largely about events from when the mortgage began in 2007 until 2017. But there is an element that is ongoing. They complain:

- It wasn't clear that the lender was communicating with them up until Mr D was made bankrupt in 2010.
- After Mr D was made bankrupt, he said he did not have control over his finances. He said he received no correspondence or other contact from the lender regarding the mortgage until around February 2017. Their phone number had been deleted.
- In February 2017, the lender started repossession proceedings, but they weren't kept up to date with what was happening.
- They were forced to pay £4,000 in February 2017 to avoid losing their home.
- The balance on their mortgage has increased from £38,000 to around £65,000. Despite paying more than £6,000 a year, the balance of the mortgage goes up. They accept that is because they missed some payments – but it is also because the lender did not contact them for five years. That also meant they weren't told when the lenders changed.
- The fees and charges are unfair.

I issued a jurisdiction decision, which said I couldn't consider:

- The lack of contact before 30 March 2017.
- The interest applied before 30 March 2017.
- The payment made to stop eviction in 2017.
- Whether it was right for Acenden to communicate with the trustee in bankruptcy.
- The fees and charges applied before 20 June 2016.
- The balance of the mortgage before 20 June 2016.

I then issued a provisional decision, proposing to uphold the complaint in part. My provisional findings, which form part of this decision, were:

Arrears

Mr and Mrs D's complaint is that because of the interest and charges applied to their mortgage, the balance of their mortgage has gone up. In June 2016, the balance of the mortgage was £66,072.44. The balance in January 2024 was £67,790. So despite Mr and Mrs D paying (by my calculation) over £38,000 from June 2016, they have not made any inroads into the mortgage balance and they are not on track to repay it by the end of term.

While I am not considering the contact (or lack of it) before 2017, I can see that Acenden would have been aware of Mr and Mrs D's circumstances. So when they paid a lump sum to avoid eviction in March 2017, that was a good point to carry out a thorough review of the mortgage. If it had done so, I think it would have been apparent that the loan was not on track to be repaid by the end of the term. – and certainly once it had more details about Mr and Mrs D's income and expenditure and how much they could afford to pay.

Acenden had a duty to treat Mr and Mrs D fairly once they were in arrears. The relevant rules (MCOB 13.3.4A) set out the concessions a lender must consider when a borrower was in arrears. I asked Acenden what steps it had taken to assist Mr and Mrs D and to treat them fairly – bearing in mind the loan is behind schedule and was unlikely to be repaid by the end of the agreed term.

Acenden replied to say between 2017 and 2022 it agreed several repayment agreements – following receipt of information about Mr and Mrs D's income and expenditure it agreed to accept the contractual monthly payment plus an additional amount, which was enough to repay the arrears at the end of term.

Acenden said the arrears reduced since the arrangements were agreed, but due to fees and charges applied before 2017, the total balance increased due to interest being applied to a larger outstanding amount.

I don't consider Acenden has treated Mr and Mrs D fairly. As I understand it, the payment arrangements were never going to be sufficient to clear the full balance of the mortgage. Acenden appears to say that if the arrangements had been met, there would still have been a balance made up of fees and charges incurred before 2017. And the letter it has provided from August 2020 said that Mr and Mrs D should pay £83.07 a month over 196 months to clear an overdue balance of £21,581.42. But it would take around 260 months to clear that amount if no interest was charged. As far as I can see the arrangements were never going to clear the mortgage in the agreed term. So Acenden missed opportunities to consider other options to get the mortgage back on track.

Further, looking at Acenden's contact notes, I can't see that it has ever considered any other concessions apart from payment arrangements. As I said above – the relevant rules say that Acenden must consider whether in the individual circumstances it is appropriate to offer a number of different concessions. I can see why, if Acenden had fairly explored whether concessions were appropriate for Mr and Mrs D, it would not have considered that extending the term, switching the type of the mortgage or capitalising was appropriate in the circumstances of this case. None of those things would have helped Mr and Mrs D.

But it is not clear why deferring payment of interest was not considered. In my experience this is something that many second charge lenders offer in similar circumstances to this, where a borrower is behind schedule on their mortgage. Usually the interest is calculated on a simple basis on the mortgage balance, the interest is applied to a separate account and any payments are applied to the mortgage balance. That way the mortgage balance reduces more quickly and it also means less interest is incurred overall.

Looking at the evidence we have, I consider it was clear from March 2017 that any arrangement was not going to be sufficient to clear the full balance of the mortgage including

any arrears and fees and charges. So acting reasonably and in line with the rules, and what I consider to have been good practice, Acenden ought to have deferred interest as I have set out above. That would have been a positive step and would have resulted in a fair outcome for Mr and Mrs D. That would have given them a fair chance of repaying the loan, rather than setting arrangements which did not address the underlying issues or give them a fair chance to repay the loan in term.

Therefore, I consider it would be reasonable for Acenden to rework the mortgage on the above basis from 20 March 2017 to date. It should then produce a new payment schedule over the remaining term and contact Mr and Mrs D to gather up to date information about their income and expenditure to assess whether a new payment arrangement is affordable.

I note that the evidence I have shows that Mr and Mrs D have not made any payments to the mortgage for a number of months. Acenden said the arrears are increasing and it is considering legal action. That might still be a legitimate step for it to take. But I consider it would be reasonable for Acenden to re-work the account first and review things then.

Fees and charges

Looking at the period I can consider – from June 2016 – it appears there are only around £250 of arrears fees and field agent fees and alternative payment method fees that have not already been refunded. Acenden is entitled to apply fees to reflect the additional costs it incurred in dealing with Mr and Mrs D while the mortgage was in arrears.

In saying that, it appears that Acenden was carrying out legal action prior to March 2017. That should be a last resort. So it is not clear why it needed to carry out additional recovery action that would warrant an arrears fee between September 2016 and March 2017. So it should reverse the fees it applied in September and October 2016.

Looking at things broadly, I think the remaining arrears fee is not unreasonable, bearing in mind the additional amount of work that Acenden has carried out in respect of the arrears - and would still have had to do so if it had put in place a concession as set out above

There are also 13 alternative payment method fees of £5 each, that have not been refunded. It appears that a direct debit was not in place from March 2017. But it's not sufficiently clear what steps Acenden took to set up a payment method to avoid these fees. Nor is it clear why it was fair to apply such a fee to a customer who was already in financial difficulties and knowing the position of the account. So I consider it would be fair and reasonable for Acenden to reverse those fees.

Looking at the circumstances, it seems reasonable for Acenden to instruct a field agent to visit Mr and Mrs D in November 2016 and to pass on the cost of that to them.

There are two "enforcement fees" in January 2017. Presumably that was in respect of the legal action. But unless Acenden can tell me why two were applied and has a valid reason for that, it should reverse one of them.

I also note there are a number of legal costs that were applied in 2017. They appear to be in relation to action taken by Acenden prior to March 2017. I've already explained I can't look at the lack of contact, the payment made to stop eviction or interest applied before 30 March 2017. And the legal action and associated costs are linked to those things. So I won't be considering them here. I would add that Acenden was entitled to pass on its legal costs and the amount charged was not unusual in my experience.

Distress and inconvenience

It's clear Mr and Mrs D have been caused a significant amount of distress and inconvenience since June 2016. I consider a significant part of that is due to their financial difficulty and the position of the mortgage before that – and Acenden isn't responsible for that. But I can see that by not properly considering what concessions it could offer Mr and Mrs D, that has added to the feeling of hopelessness they've experienced in respect of the loan. If Acenden had looked at offering a different concession the overall picture might not have been as bleak – although I accept that Mr and Mrs D would still have been in arrears.

Overall I consider it would be fair for Acenden to pay Mr and Mrs D £500 for any distress and inconvenience. That is to reflect that it has not treated them, fairly and that will have added to their distress in relation to this matter.

I proposed that Acenden should:

- *From 30 March 2017 – re-work Mr and Mrs D's mortgage so that:*
 - *Interest is calculated on a simple basis on the balance of the mortgage.*
 - *Any interest is applied to a separate sub-account, which does not attract interest.*
 - *All of the payments that Mr and Mrs D made are applied in full to repay the capital balance – not any interest.*
 - *Once the main mortgage balance is repaid then payments should be used to repay the arrears balance, then the fees balance and then the interest balance sub-account.*
- *Reverse the arrears fees applied in September and October 2016.*
- *Reverse all alternative payment method fees from 20 June 2016.*
- *Reverse one enforcement fee from January 2017.*
- *Once the mortgage has been recalculated in line with the above, produce a new payment schedule for the remaining term of the mortgage.*
- *Obtain up to date income and expenditure details for Mr and Mrs D and consider whether there is a sustainable payment arrangement to get the mortgage back on track – and write to Mr and Mrs D to confirm the outcome of that assessment.*
- *Pay Mr and Mrs D £500 directly.*

Mr and Mrs D responded to say that they could not understand why we could not deal with things that happened more than six years ago.

Acenden responded to say that its systems would not allow it to apply interest to a separate sub-account or to defer interest. It agreed to:

- Refund fees of £280.
- Move the existing arrears balance to an interest free sub-account and apply no interest to that account. On 30 July 2024 the arrears were of £25,745.65.

- Reduce the balance of the mortgage by the difference between the current balance and the balance if simple interest had been applied from March 2017. On 30 July 2024, that would have reduced the balancer of the mortgage by £12,635.08.
- Pay Mr and Mrs D £500.
- Work with Mr and Mrs D to carry out an affordability assessment to reach a suitable payment arrangement.

I put the offer to Mr and Mrs D – but they did not respond.

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 accept that Acenden is unable to put in place all of the things I proposed in my provisional decision. But I consider that its offer is a fair way to put things right – and reflects that there is more it should have done to help Mr and Mrs D over the term of the mortgage.

There is an ongoing requirement for Acenden to treat Mr and Mrs D fairly. I don't know any details about Mr and Mrs D's current income and expenditure or circumstances. If they accept my decision and the account is restructured it may become sustainable and they might be able to repay it within the agreed term. But if not, Acenden should consider whether further forbearance is required.

I note Mr and Mrs D are still concerned that the lender and administrator of the mortgage has changed. That is usually allowed for under the terms and conditions of a mortgage – and in any case, I can't see that Mr and Mrs D have lost out as a result of that. The same requirements to treat them fairly apply to Acenden as applied to the initial lender.

Putting things right

Acenden has agreed to:

- Refund fees of £280.
- Move the existing arrears balance to an interest free sub-account – and do not apply any more interest to that sub-account.
- Reduce the balance of the mortgage by the difference between the current balance and the balance if it had applied simple interest from March 2017.
- Pay Mr and Mrs D £500 directly.
- Once the mortgage has been recalculated in line with the above, produce a new payment schedule for the remaining term of the mortgage.
- Obtain up to date income and expenditure details for Mr and Mrs D and consider whether there is a sustainable payment arrangement to get the mortgage back on track – and write to Mr and Mrs D to confirm the outcome of that assessment.

I consider that is a fair way to resolve this complaint.

My final decision

My final decision is that Kensington Mortgage Company Limited trading as Acenden should take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 12 September 2024.

Ken Rose
Ombudsman