DRN-4548580

The complaint

Mr and Mrs H complain that Kensington Mortgage Company Limited unfairly took and retained an additional mortgage payment on the day they planned to redeem their mortgage with it.

What happened

Mr and Mrs H initially had a mortgage with Kensington for approximately £250,000. The mortgage was to be repaid on a capital and interest basis over 32 years. A fixed interest rate of 5.19% applied for the first 24 months, after which interest of 4.5% above Kensington's standard variable rate would apply. Mr and Mrs H's fixed rate ended on 30 September 2023.

To avoid going on to Kensington's standard variable rate (SVR), Mr and Mrs H arranged – via a broker – to remortgage to a different lender. On 1 October 2023 Kensington took a direct debit payment for the contractual monthly payment (CMP), as it did on the first day of every month. But this time the CMP was based on Kensington's SVR so was considerably higher than their previous payment - £2,146.92 as opposed to £1,337.05.

Mr and Mrs H's mortgage with Kensington was set up to be paid in advance. So, when Kensington received the redemption payment from Mr and Mrs H's solicitors on 4 October 2023, it reduced the mortgage balance by the portion of the CMP that would have applied for the remainder of the month.

Mr and Mrs H say they initially thought the payment would be returned to them once Kensington received the redemption payment from the new lender. But instead, Kensington applied the whole payment to the mortgage and so reduced the amount required to redeem the mortgage.

Mr and Mrs H say they understand they've not lost the money but complain that it was not for Kensington to decide to apply it to the mortgage. They say they did not have a mortgage with Kensington for the month of October 2023, so they didn't owe Kensington money for that month. They're particularly concerned that the interest element of the payment was used to reduce the capital balance and that was done without their agreement. And while their new mortgage balance is lower, they say they expected that money to be available to spend. Kensington told them not to cancel their direct debit before the mortgage had completed but Mr and Mrs H say they were not advised Kensington would apply any further payments taken to the mortgage balance. So, Mr and Mrs H complained to Kensington.

In its final response letter dated 9 October 2023, Kensington said Mr and Mrs H's solicitors requested a second redemption statement on the day of redemption – 2 October 2023. But that was after the October payment had been taken so the new redemption statement reflected that and the lower amount was paid by Mr and Mrs H's solicitors. The letter confirmed Kensington didn't uphold Mr and Mrs H's complaint.

Following contact from Mr and Mrs H's broker, Kensington wrote a second final response letter dated 17 November 2023. In that letter Kensington apologised for not addressing Mr and Mrs H's complaint fully in its previous letter. The letter then went on to explain that, according to the terms and conditions of Mr and Mrs H's mortgage, interest is calculated daily based on the total outstanding mortgage and added to the account on the last day of every month. Customers choose a date in the same month to make their payment. Mr and Mrs H's chosen date – from the start of the mortgage – was the first of each month. As the total outstanding balance reduced from the date the mortgage payment is made, interest was calculated on the lower balance for the remainder of each month. It said, in October 2023 the payment was collected on 1 October as scheduled and Mr and Mrs H would have been reasonably aware that payment would have been calculated on the SVR from previous correspondence.

Kensington's letter confirmed that it received a redemption statement request on 2 October 2023 from Mr and Mrs H's solicitors and the mortgage was redeemed in full on 4 October 2023. Kensington said it was obliged to include any payment already made when supplying the redemption statement to Mr and Mrs H's solicitors. It said Mr and Mrs H's broker confirmed that the new lender's policy was to pay the exact figure required to redeem the mortgage, despite agreeing a higher amount previously.

Dissatisfied with Kensington's response, Mr and Mrs H asked us to consider their complaint.

Our investigator didn't think Kensington did anything wrong. In her opinion letter to both parties, she quoted two parts of the mortgage terms and conditions:

> 5.14 says: "*When you make a monthly payment and any other payment under our agreement with you, we will apply it to your account immediately*."
>
> 5.17 says: "*If you make an overpayment, we will not refund the overpayment to you unless it's greater than your loan balance, in which case we will refund the difference to you*."

Given the apparent sequence of events, our investigator thought Kensington acted within the terms and conditions of Mr and Mrs H's mortgage. She said she didn't think Kensington needed to take action or pay rederess because Mr and Mrs H hadn't suffered a financial loss and Kensinton didn't make an error.

Mr and Mrs H didn't agree with our investigators opinion. They say they accept that the excerpts from the terms and conditions apply to regular monthly payments but it is not clear that Kensington would charge a full month's payment when the mortgage was redeemed. And they say they did not choose to make an overpayment – Kensington treated their payment as an overpayment without their knowledge or consent. Mr and Mrs H made points about the following:

- The interest part of a mortgage payment is not supposed to be used to reduce capital and Kensington shouldn't have charged interest for any days after the date of the proposed redemption.
- They were advised by Kensington not to cancel the direct debit and it isn't reasonable to suggest they ought not to have followed that advice.
- The figures in Kensington's updated redemption quotation were inaccurate because it was provided before the October payment had cleared.
- They haven't seen reference to any evidence that Kensington acted fairly or reasonably.
- The Financial Conduct Authority's (FCA) Consumer Duty principle is relevant to this complaint and says that customers should be provided with timely, clear and understandable information about products so they can make good financial decisions. Mr and Mrs H say Kensington didn't do that.

Mr and Mrs H say it was impossible for them to know what Kensington's process for redemption was, so they couldn't have acted differently.

As Mr and Mrs H didn't agree with our investigator, their complaint has been passed to me for a 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.

To decide Mr and Mrs H's complaint, I've thought about whether Kensington have acted outside of the terms and conditions of Mr and Mrs H's mortgage, provided Mr and Mrs H with misleading information or should have provided them with a specific warning that they'd not receive a refund/partial refund of October's payment.

In her opinion letter, our investigator referred specifically to two parts of Mr and Mrs H's mortgage terms and conditions – quoted above. They describe what happens when a payment is made and what happens to overpayments. In this case Mr and Mrs H's payment was applied to the mortgage account as per the terms and conditions. And, as it transpired that the account was redeemed soon after payment – and well before interest for October 2023 was applied – it was treated as an overpayment.

I understand that Mr and Mrs H don't agree that October's payment was an ordinary regular payment because their mortgage was redeemed soon after it was made. But, at the time it was made, it was just that – an ordinary regular payment, albeit that the interest rate had increased.

Mr and Mrs H also say they didn't consent to October's payment being treated as an overpayment. But I've not seen in their mortgage terms and conditions that they would have to. Nor would I ordinarily expect a lender to seek consent when applying a payment greater than that required as an overpayment.

More generally, what's happened regarding the redemption of Mr and Mrs H's mortgage account is what I would expect – the amount required from the new lender to redeem the mortgage account is the specific mortgage balance on the day of redemption. I understand that the drawbacks of that are made more extreme in Mr and Mrs H's case because the interest due is added at the end of each month and their payment date is the first of each month. And, of course, the payment increased significantly for October because of the change to SVR. But, given that the payment was made before the redemption – Kensington would have called the direct debit some days before the payment date – the mortgage worked how I would expect it to.

Mr and Mrs H say the interest is not supposed to be used to reduce the capital. I understand the point they make here, but, in practice, that's what it does every month. And Mr and Mrs H have benefited from that because when their CMP was made at the beginning of every month, the subsequent interest was calculated at the reduced amount every day until Kensington added the interest to the account at the end of the month.

With regard to the advice given by Kensington to not cancel the direct debit, again I don't think it acted unreasonably. Mr and Mrs H's intentions may have been concrete as far as they were concerned, but Kensington couldn't have known at the time of advising them not to cancel the direct debit that the remortgage would definitely proceed. So, I think that was reasonable. Mr and Mrs H say they couldn't have acted differently to avoid what happened, but, as an alternative to cancelling their direct debit they could have changed the payment date to later in the month. While I don't necessarily expect them to have known that was an option they could have explored, they had engaged the services of a broker who could have helped them achieve what they wanted.

In their response to our investigator's opinion letter, Mr and Mrs H say the second redemption letter was inaccurate at the time it was produced because the payment collected for October hadn't cleared. My understanding is that the redemption statement took that payment into account – that's the root cause of the complaint – and I think it did so correctly. I've seen that the redemption figure paid didn't include some interest that was payable on the mortgage account and that Kensington have written-off that amount rather than chasing Mr and Mrs H for payment. I haven't seen that they were left out of pocket – aside from their own expectations.

I have thought about Kensington's responsibilities under the FCA's consumer duty principle. Kensington told us that they thought that was a new complaint point, but it isn't – consumer duty is an FCA principle that we'd need to be mindful of for any complaint which the principle may apply to, whether or not explicitly raised in the complaint. So, it's reasonable for me to take it into account even though Mr and Mrs H have mentioned that after bringing their complaint to us.

The consumer duty principle doesn't apply to the terms and conditions of Mr and Mrs H's mortgage because they pre-date the implementation of the principle. But I think the principle is relevant in my consideration of the redemption notices provided to Mr and Mrs H. As Mr and Mrs H have said, communications need to be timely, clear, fair, and not misleading, allowing Mr and Mrs H to make an effective decision. To consider the fairness of redemption statements taking into account those standards, I have to bear in mind their purpose. Primarily that purpose is to give accurate (or as accurate as possible) figures relating to what Mr and Mrs H needed to pay to redeem their mortgage with Kensington. I think they provided those figures when requested to do so (timely) and I think the figures were presented clearly (clear, fair and not misleading) – such that Mr and Mrs H, or their solicitors on their behalf, were able to understand the amount needed to redeem the mortgage on the day of the redemption request and thereafter (understandable). The first redemption statement, requested in September, was based on the balance at that time, before payment was made. The second statement, requested on 2 October, was based on the balance after payment was made. Both were accurate as at the date they were requested.

The first redemption statement confirms that the figures may change if the circumstances change. I think it's a reasonable assumption that a payment to the mortgage account is a change to the circumstances under which the redemption statement was calculated and so would change the figures. I also think Mr and Mrs H knew when their monthly payment was due, so I don't think it was necessary for Kensington to include that information in the redemption statement. Overall, I think Kensington's redemption statement was timely, clear and understandable. I don't think it says anything that would lead Mr and Mrs H to assume any overpayment would be refunded to them.

In summary, while I appreciate that the timing of the redemption has left Mr and Mrs H with considerably less available money than they would have liked, I don't think Kensington has done anything wrong. And I think the redemption process happened as I would expect. That means I don't uphold their complaint.

My final decision

My final decision is I don't uphold Mr and Mrs H's complaint about Kensington Mortgage Company Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H and Mr H to accept or reject my decision before 24 May 2024.

Gavin Cook
Ombudsman