DRN-4020009

The complaint

Mr H and Mr M complain about their mortgage with Kensington Mortgage Company Limited. They're unhappy it wouldn't give them a new interest rate, and that it wouldn't agree to remove Mr M from the mortgage.

What happened

Mr H and a third party took out a mortgage in 2007. The mortgage was originally with another lender and later transferred to Kensington.

The mortgage was on a fixed rate for the first three years, after which it reverted to a variable rate of 2.64% above the Barclays Bank base rate (which, in practice, has been the same as the Bank of England base rate). The mortgage has been on the variable rate since the fixed rate ended in 2010. The mortgage had been in arrears, but the arrears were capitalised around the same time. In around 2011, the original joint borrower was removed from the mortgage and replaced with Mr M, so from then on it was a joint mortgage between Mr H and Mr M.

Mr H and Mr M's relationship broke down, and they contacted Kensington in 2021 to ask for Mr M to be removed from the mortgage, with it being put in Mr H's sole name. Kensington said it couldn't make that change until Mr M had moved out of the property.

Mr H and Mr M complained. They said they were unhappy they had an interest only mortgage and while Kensington had offered to consider changing it to repayment terms that would be unaffordable for them, and Kensington hadn't offered them a lower interest rate to make it more affordable. Mr H and Mr M have managed to make overpayments to reduce the balance, but it's only recently that the property has stopped being in negative equity. They said it was unfair that Kensington wouldn't consider removing Mr M from the mortgage until he had moved out. It meant Mr M had to take on the expense of renting another property without knowing he'd be freed from his obligations under this mortgage. That amounted to discrimination.

Mr H has now been able to re-mortgage on a repayment basis with another lender, but he and Mr M said Kensington's refusal to help them has caused additional stress and expense and prevented them making bigger overpayments.

Kensington said Mr H and Mr M had asked about a new interest rate in November 2017 but it didn't have anything to offer them. It said they had asked about removing Mr M from the mortgage in 2021, and while it was willing to start the process it wouldn't be able to complete it until Mr M had left the property. It said it had told Mr H and Mr M this and hadn't received a formal application.

Our investigator didn't recommend upholding the complaint. She said that when Mr H and Mr M asked about a new interest rate, in 2017, there wasn't one available. And she said it was reasonable that Kensington wouldn't complete a transfer of the mortgage while Mr M was still living in the property. Mr H and Mr M didn't agree and asked for an ombudsman to review their complaint.

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.

We've separately explained (in a complaint against the original mortgage broker) that we can't consider a complaint about the advice Mr H and the original joint borrower received to take out this mortgage, because that complaint is out of time.

In this complaint, I'll focus on the actions Kensington has taken, and in particular whether Mr H and Mr M have been charged a fair rate of interest or not, and whether Mr M should have been removed from the mortgage in 2021. I've not seen evidence that they've specifically asked Kensington about changing the mortgage to repayment terms, at least within the last six years. But in any case I understand their concerns about their inability to afford that, and the inability to make larger overpayments to reduce the balance, flow from their underlying complaint that the interest rate is unfairly high because Kensington didn't offer them a new interest rate.

Kensington didn't offer new interest rates to any existing customers until 2017. There's nothing in the mortgage offer or terms and conditions that says it has to. The mortgage offer just says the mortgage would be on the fixed rate until 2010 and then the variable rate thereafter. Nor is there any rule of mortgage regulation that says it had to offer new rates.

I understand Mr H and Mr M feel Kensington should have offered them a rate – not least because other mortgage lenders do. That's true; many other lenders do choose to offer new interest rates to existing customers. But there's no obligation on them to do so, and in choosing not to offer rates to any customers before 2017 Kensington did nothing wrong. Mr H and Mr M were in the same position as all other Kensington customers, and their mortgage operated as the offer and terms and conditions said it would, so it didn't treat them unfairly.

Once Kensington did start to offer rates, in 2017, it didn't make them available to all customers. It's legitimate for lenders to have eligibility criteria – which means that some customers may be eligible for different rates to others, and some customers might not be eligible at all – but lenders should deal with any application fairly.

There's also no obligation on lenders to pro-actively apply an interest rate to a mortgage. Not all customers want a new fixed rate. While a lender should consider any application it receives fairly, it's ultimately up to the customer to make an application.

With that in mind, I've looked at the evidence to see whether there are any occasions Mr H and Mr M asked Kensington about a new interest rate once it started offering them in 2017.

There's a record in Kensington's contact history of a call in November 2017, when Mr H and Mr M asked whether new interest rates were available. Kensington said it didn't have any new rates available, and they would need to seek independent financial advice about re-mortgaging.

There's no record of any contact with Mr H and Mr M then until January 2019, when there was a call about changing the date of the monthly payment and whether payment holidays were available. In February 2019, they were advised that they weren't entitled to a payment holiday, but because they had made overpayments the mortgage was in credit and wouldn't be treated as being in arrears if they had missed a payment. There's no record of a discussion about the interest rate at this time.

In March 2019, Mr H and Mr M complained that Kensington told them it couldn't set up a direct debit for the amount they wanted to overpay as well as the contractual monthly payment following the change of payment date – though it later said it could. Again, there's no record of a discussion about the interest rate.

In April 2019, there were further conversations about problems taking the new direct debit. In May 2020, there was a further complaint that the amount collected had changed following a change in the monthly payment – Kensington explained that it didn't collect a fixed amount, it collected the monthly payment (which had changed following a change in interest rates) plus an agreed overpayment amount. Kensington switched the direct debit to collecting a fixed amount. Again, there's no record of a discussion about the interest rate.

In 2021, there were a series of conversations about the change of borrowers, but there is no record of a discussion about the interest rate.

Mr H and Mr M say they did ask about new interest rates, only to be told nothing was available. So as well as checking Kensington's notes, I've also listened to the call recordings, but – other than the conversation in November 2017 – I've not heard any mention of changing the interest rate on the mortgage.

Mr H and Mr M have told us that the property has historically been in negative equity, and they've been reducing the balance over time to deal with that. Using a house price index service, it appears that the value of their property in November 2017 was around £135,000 and the mortgage balance was around £130,500. This makes the loan to value 97%.

Kensington told Mr H and Mr M that it didn't have rates available to them at this time. It did offer interest rates to existing customers. But loan to value was part of its eligibility criteria – and a loan to value of 97% fell outside the criteria. No customer with a loan to value that high would have been eligible for a new interest rate.

I don't therefore think that Kensington treated Mr H and Mr M unfairly. Loan to value is a reasonable factor for a lender to take into account. No other Kensington customer with a loan to value at that level would have been offered a rate either. I don't think it's unfair that it didn't offer one to Mr H and Mr M.

It's also the case that even if Mr H and Mr M had been eligible for a new fixed rate, and should fairly have been offered one, I don't think it would have made any difference. At this time, base rate was 0.5%. Mr H and Mr M's reversion rate was 2.64% above base rate – meaning the interest rate they were paying was 3.14%. This was lower than the fixed rates Kensington offered to existing customers. So taking a new fixed rate wouldn't have reduced their monthly payments in any event.

Turning to the application to change the parties to the mortgage in 2021, I don't think Kensington acted unfairly here either. It would only consider an application to remove Mr M, not Mr H, because it requires at least one of the original mortgage applicants to remain on the mortgage throughout.

And while it would consider an application to remove Mr M, it wouldn't complete and finalise the change until Mr M had moved out of the property, and it would require the ownership of the property to change at the same time as the mortgage changed.

I think that's fair and reasonable. Where an adult who's not party to the mortgage resides in a property, they potentially have rights in relation to the property which can complicate matters should Kensington ever need to repossess the property. And that's particularly true where the occupant is also an owner – or former owner – of the property. In order to make sure that its own security over the property was protected and fully enforceable (should the need ever arise), it wouldn't agree to remove Mr M from the mortgage until he'd moved out.

I take Mr M's point, that this means he'd have to move out and commit to paying the rent somewhere else before he knew whether he'd be free of his obligations under the mortgage. But I don't agree that it amounts to discrimination – as a matter of law under the Equality Act or otherwise. Kensington's policy is a reasonable way of addressing a legitimate concern, and if Mr M wanted to be free of his obligations, it's reasonable to expect Kensington not to have to take on extra risk to enable him to do so.

Kensington addressed Mr M's concerns about this by saying that it would consider an application to remove him, and give them an answer on that application, before Mr M moved out of the property. But it wouldn't complete the change, formally removing Mr M from the mortgage, until after he'd moved out. I think that's fair and reasonable in all the circumstances.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mr M to accept or reject my decision before 19 October 2023.

Simon Pugh
Ombudsman