

The complaint

Mrs B and Mr K complain about two buy to let mortgages with Paratus AMC Limited trading as Foundation Home Loans. In particular, they're unhappy about the interest rate and actions taken to recover the debt. They also don't believe that Foundation is legitimately their lender or entitled to collect the debt from them.

What happened

Mrs B and Mr K took out two buy to let mortgages with a firm called Victoria Mortgage Funding Limited in 2006. The loans have since been transferred to Foundation.

Both loans were at an initial fixed rate of 5.89% for two years, reverting to a variable rate which would track 2.7% above the LIBOR rate for the remainder of the mortgage term. When the LIBOR rate was withdrawn, Foundation replaced it with the Bank of England base rate – so the mortgages tracked 2.7% above base rate from April 2022.

Both mortgages were for £130,000 over 15 years on interest only terms, secured over neighbouring properties. The terms of both mortgages came to an end in 2021, but the capital balance remains outstanding. Since 2023, the mortgages have also fallen into arrears on the monthly payments. Foundation is now threatening to appoint receivers or take legal action to repossess the properties.

Mrs B and Mr K complained. They said they were taking action to sell the properties to repay the mortgages and threatening to repossess or appoint receivers while that was happening wasn't fair. They complain that Foundation hasn't treated them fairly since the mortgage terms ended. They also complain that they have been charged excessive interest. And they say that they have never taken out mortgages with Foundation, have not signed agreements with it, and dispute that it's entitled to recover the mortgage balances from them.

Our investigator didn't think that the complaint should be upheld. Mrs B and Mr K didn't agree, so the complaint comes to me to make 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.

First of all, I've thought about whether Foundation is the lender here, and whether it is entitled to expect Mrs B and Mr K to repay. I'm satisfied that it is.

Although the mortgages were originally with Victoria, the terms and conditions allow for them to be transferred to another lender.

Condition 19 of the terms and conditions says:

We may at any time (either in law or in equity) charge, dispose, assign or transfer any or all of our rights benefits and obligations under the mortgage and or the mortgage debt to any person without first seeking your permission.

This means that Victoria was allowed to transfer the loan on. And it means that Foundation is now Mrs B and Mr K's lender. It doesn't matter that they didn't sign an agreement with Foundation – they signed an agreement with Victoria, and that agreement said that Victoria could transfer the loan on. So I'm satisfied that Foundation is the lender, and that it is entitled to expect Mrs B and Mr K to repay their mortgages.

Next, I've thought about whether interest has been charged fairly. I'm satisfied that it has. The mortgage offers say that interest will be charged at a variable rate 2.7% above LIBOR after 2008, and this is what has actually happened. Once LIBOR no longer existed, Foundation had to change the reference rate – it replaced it with Bank of England base rate, and since April 2022 the interest rate has tracked 2.7% above base rate.

I'm satisfied this was fair. Once LIBOR no longer existed, it had to be replaced with something. Bank of England base rate is a comparable reference rate, and one the regulator said could be used instead. So – subject to that change – I'm satisfied that interest has been charged fairly and in line with the terms and conditions.

I've therefore not seen anything which persuades me that Foundation is not entitled to recover the mortgage balances from Mrs B and Mr K, or anything that suggests the amount it is expecting them to pay is wrong or unfair.

The terms of both mortgages ended in 2021, which meant that Mrs B and Mr K were expected to repay the capital at that point. However, they didn't do so, and three years have now passed.

I've taken into account what Mr K has said about his health and other difficulties, and I'm sorry to hear about that. But the fact is that the mortgage balances will need to be repaid. In recent months, the monthly interest also hasn't been paid, or not paid in full, and the mortgages have gone into arrears. This means the balances are increasing. Mrs B and Mr K said in 2023 that they were taking steps to sell the properties, but that hasn't happened. I think Foundation has shown forbearance, and allowed Mrs B and Mr K reasonable time to find a way to repay the outstanding balances. I don't think it has acted unfairly.

If Mrs B and Mr K have a proposal to repay now, Foundation should give what they say fair consideration. But if there isn't any prospect of the arrears being brought up to date, and the mortgage balances being repaid, soon then Foundation will be entitled to take action to recover the debt – which might include appointing receivers or seeking repossession.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr K to accept or reject my decision before 9 January 2025.

Simon Pugh
Ombudsman