DRN-5757277

The complaint

Mr and Mrs H complain about action taken by Paratus AMC Limited trading as Foundation Home Loans (Foundation) in respect of their mortgage, in particular relating to action it took to repossess the property.

What happened

Mr and Mrs H had an interest only mortgage with Foundation. It was taken out in 2006, with the term ending in 2020. Unfortunately, Mr and Mrs H were unable to repay the capital at the end of the term, but they continued to pay the monthly interest payments until 2023.

Mr and Mrs H then were unable to make any further payments because of financial difficulty. In 2024, Foundation said that unless they made proposals for repayment, it would begin repossession action. Foundation issued legal proceedings in June 2024, and Mr and Mrs H redeemed the loan shortly afterwards with a lifetime mortgage.

Mr and Mrs H complained. They said that Foundation had not acted fairly. It had refused an application to switch to repayment terms in 2020. It had not then given them any indication of the terms on which the mortgage continued, or any deadline for repaying it – misleading them into believing it would continue. Allowing the mortgage to continue for four years set a precedent. It wasn't therefore fair to rely on the term having expired in 2020 when taking them to court. They also said that Foundation hadn't served a default notice before taking action, as the law requires.

Mr and Mrs H said that Foundation hadn't kept them updated or warned them it was considering legal action. They said that once it did take proceedings, it already knew that they were in the process of taking out a lifetime mortgage to repay this loan. And it knew that for two years before that they were trying to sell the property. Mr and Mrs H said they had kept Foundation up to date throughout, not least when making payments over the phone every month. Throughout this time, they were experiencing serious health concerns and financial difficulty.

Mr and Mrs H said that in 2024 Foundation said it would no longer talk to them over the phone and would only communicate in writing. They said this followed a difficult call in May 2024 in which a staff member repeatedly spoke over Mr H, wouldn't listen to what he said, and dismissed his concerns, eventually leading to him having to tell her to "shut up" so he could speak.

Mr and Mrs H also said that they had made a subject access request, which Foundation had not responded to appropriately. Its correspondence with them was unclear and didn't convey what it was doing or the urgency of their situation. It added £612 in legal costs to the mortgage balance when they redeemed the loan. They also complain that they were forced to take a higher interest rate lifetime mortgage to ensure they could complete in time to avoid repossession.

Foundation said it hadn't acted unfairly. It had shown appropriate forbearance by not starting legal action until 2024, but by then the capital was four years overdue and interest hadn't been paid for a year. It said it communicated in writing because phone calls were unproductive. It had written to them explaining what was happening and why.

Our investigator didn't think the complaint should be upheld, so Mr and Mrs H asked for it to be reviewed by an ombudsman.

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.

The mortgage term ended in 2020, and at that point the capital was due for repayment. All other things being equal, it's not unreasonable for Foundation to expect Mr and Mrs H to repay the mortgage as they agreed.

However, when they were unable to repay at the end of the term as scheduled, I would expect Foundation to work with them and try and understand their circumstances, offer appropriate forbearance, and try to reach agreement for repayment in due course.

I'm satisfied that Foundation did that. When the term ended, the coronavirus pandemic lockdowns were in place. The regulator told firms not to take repossession action, except in exceptional circumstances, before October 2021.

During this time, Foundation was in touch with Mr and Mrs H. They said at various times that they were looking to sell the property or take out equity release to repay the mortgage. After October 2021, Foundation allowed them additional time to find a way to repay – taking account of Mr and Mrs H's health concerns at that time, and the impact repossession would have on them as a result.

Mr and Mrs H say that this meant that they ended up paying more to redeem their mortgage. If Foundation had "hounded" them to repay sooner, the way it did in 2024, then they would have repaid sooner.

However, I think Foundation was always clear with Mr and Mrs H that the mortgage would need to be repaid. I've looked at the letters it sent, and I think they are clear and accurate. Mr and Mrs H said that they didn't emphasise the seriousness or urgency of their situation, using for example bold type or headings. There's no requirement for letters to be formatted in a particular way, but I'm satisfied the content was clear. It was always open to Mr and Mrs H to have repaid the mortgage sooner had they been able to. I don't think it was unreasonable that Foundation offered them forbearance until 2024 – or that it concluded that further forbearance was no longer appropriate after that.

Mr and Mrs H say that their annual mortgage statements show that there was still a term remaining. That's correct – they show a few months remaining each year. Foundation explained to Mr and Mrs H in letters several times that this was because it needed to make a manual amendment to its mortgage management system to show an unexpired term so that monthly payments could still be accepted. It said that this did not mean that the term had in fact been extended, and it still required payment to be made in full. It's unfortunate that Foundation had this system limitation, which resulted in incorrect information being included in the annual statements – but I'm satisfied it made clear to Mr and Mrs H why this was and that their mortgage term had not in fact been extended.

During this period, I'm satisfied Foundation showed the forbearance I'd expect. It took into account the pandemic situation, as well as Mr and Mrs H's specific circumstances, and allowed them several years to find a way to repay the mortgage – while also reminding them that it would need to be repaid. I don't think showing forbearance in this way means that Foundation can't later take action to recover the balance. Overall, on balance I'm not persuaded that Mr and Mrs H could reasonably have understood that their mortgage had been extended indefinitely.

By late 2023, things had changed. Mr and Mrs H were in financial difficulty, and they were struggling with the mortgage because of increases to interest rates. After August 2023, they weren't able to make any further monthly payments and so the arrears began to grow.

This meant that the mortgage balance was increasing, and any equity in the property was eroding. Given this, and given that the mortgage was now over three years beyond the end of the term, I don't think it was unreasonable that Foundation began taking legal action in 2024.

Mr and Mrs H say they were not served with a default notice, as required by the Law of Property Act. But Foundation was not required to do so – the section of the Act they refer to says that a mortgagee (that is, Foundation) shall not exercise a power of sale unless either notice has been served, or the loan is in arrears by more than two months, or unless there has been some other breach. These are alternatives; a notice is not required if there are arrears.

In fact, Mr and Mrs H were in more than two months' worth of arrears – and in any case, Foundation was not seeking to exercise a power of sale, it was asking a court to allow it to repossess the property. There's no requirement to issue a default notice before seeking repossession because of mortgage arrears. But its solicitors did send Mr and Mrs H a demand for payment ahead of taking legal action.

Around the same time, Mr and Mrs H were able to arrange a lifetime mortgage which would allow them to repay this loan. Mr and Mrs H asked Foundation to agree a reduced redemption figure – it didn't agree to that. I don't think it was unfair that Foundation expected them to repay the full amount owing.

Although Mr and Mrs H redeemed the loan before legal action proceeded, Foundation had still incurred some legal costs. The mortgage terms and conditions say it can recover legal costs, so it wasn't unfair that the costs were added to the redemption balance.

I've also thought about how Foundation communicated with Mr and Mrs H. As I say, I think its letters were clear in setting out their situation and what it needed. During 2024 there were several phone calls where Mr and Mrs H refused to go through security even when they had called Foundation, but they still wanted Foundation to provide them with information it couldn't share without completing security checks.

In May 2024, there was a call with a team leader when Mr H asked Foundation to accept a discounted payment, and it said it couldn't do so. Mr H said that because Foundation hadn't taken action before when the loan expired, it had charged them more overall. The team leader then replied, and while she was speaking Mr H tried to interrupt her, but she carried on talking. Mr H then told her to "shut up". He then explained why he thought it would be fair to reduce the balance, and the team leader said that wouldn't be possible. She said that as a result of this conversation and previous calls, Foundation would only communicate in writing from now on. I don't think this was unreasonable.

Mr and Mrs H also say Foundation didn't comply with a subject access request. Foundation says it emailed them with a link to access the information disclosed. Mr and Mrs H say they were concerned this was a spam email and didn't click the link. But Foundation did respond to their request.

Overall, and while I'm sure this was a difficult time and an upsetting experience for Mr and Mrs H, I don't think I can fairly uphold their complaint. Their mortgage term expired in 2020. Foundation allowed them considerable extra time to repay, even after Mr and Mrs H stopped making the monthly payments. That was reasonable forbearance – but it couldn't continue indefinitely. It wasn't unfair to threaten legal proceedings, but fortunately they weren't necessary because Mr and Mrs H repaid the mortgage. I don't think it was unreasonable that Foundation expected them to repay the mortgage in full. For all those reasons, I don't uphold this complaint.

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 H and Mr H to accept or reject my decision before 6 October 2025.

Simon Pugh
Ombudsman