

The complaint

Mr and Mrs O complain about various aspects of the management of their mortgage with Southern Pacific Mortgage Limited (“SPML”).

What happened

Mr and Mrs O took out a mortgage with London Mortgage Company (“LMC”) in May 2007. The mortgage was taken out on an interest only basis for £350,000 over a term of 25 years.

LMC is a trading name of SPML. They appointed a regulated administrator to administer the loan on their behalf. They appointed Kensington Mortgage Company trading as Acenden to act on SPML’s behalf. For ease, where possible, I will refer to SPML throughout this decision.

Mr and Mrs O have raised several concerns they would like our service to look into. In summary, they have said:

- They have information that shows the mortgage account was sold on 28 November 2007 under a Deed of Assignment with full title guarantee to Eurosail-UK 2007-6C PLC (“Eurosail”). Mr and Mrs O strongly believe that since this date, SPML has retained no economic interest or lender functionality.
- Eurosail is an unregulated mortgage lender. Eurosail has never offered them any support or access to fair lending options which is contrary to the Financial Conduct Authority’s (FCA) Principles and Mortgage Conduct of Business (MCOB) rules. They have been significantly disadvantaged by the mortgage being transferred to an unregulated lender.
- Mr and Mrs O’s mortgage contract has been breached since 2007. The contract defines “we/our/us” as SPML who sold the mortgage on 28 November 2007 and ceased to be their lender. No notice of substitution was ever given.
- Mr and Mrs O have new material evidence since the earlier tribunal and Financial Ombudsman Service reviews which was not previously disclosed. They have a 2019 Lasting Power of Attorney (LPA) executed by Eurosail appointing Kensington Mortgage Company Ltd as administrator. They obtained this information via a data subject access request. This document confirms SPML hasn’t been their lender since 2007 and the administrators have acted solely under Eurosail’s authority.
- Acenden has continued to report arrears to their credit files under SPML’s name even though they don’t owe SPML any money. This is causing ongoing harm.
- SPML changed the interest rate on the mortgage from LIBOR to SONIA without notification.
- SPML told Mr and Mrs O that Acenden Limited has nothing to do with the mortgage anymore as it was Acenden, a trading name of Kensington. Yet every time they make

a payment, the receipts say Acenden Ltd. They said Acenden Ltd is listed as a dormant company at Companies House.

- SPML has added buildings insurance to the account, even though they have always arranged their own insurance.
- SPML took legal action against Mr and Mrs O and this has resulted in approximately £60,000 worth of fees being applied to the mortgage account. They don't think that SPML had the right to do this.
- Mr and Mrs O wanted to switch the mortgage to repayment but this was declined. They were told this is because the mortgage lender no longer lends.
- Mr and Mrs O have repeatedly asked for simplified versions of any charges applied to the mortgage so they can understand them. They said this has never been provided to them despite instruction from the county court to do so.

Mr and Mrs O have said that their complaint relates to a continuing unfair relationship under the Consumer Credit Act 1974, alongside failures under the FCA's treating customers fairly principles, the Land Registration Act 2002 and the long-term regulatory non-compliance following the 2007 securitisation of their mortgage.

SPML have said that most of what Mr and Mrs O are complaining about has been brought to our service too late as they have issued several final response letters to them about the issues they have raised.

Mr and Mrs O brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator set out what he thought we could and couldn't consider in relation to the complaint. He also said that Mr and Mrs O's complaint about an unfair relationship wasn't relevant because their mortgage is a regulated mortgage contract which was taken out after 31 October 2004.

He said we wouldn't be able to consider Mr and Mrs O's complaint about the following issues because there were final response letters that had been sent to them, which gave Mr and Mrs O six months to bring those complaints to our service – but they were brought out of time.

He said we couldn't consider:

- The ownership of the mortgage and which business is responsible for administering the account.
- The interest rate change from LIBOR to SONIA.
- Acenden reporting the mortgage to the credit reference agencies under SPML's name.
- Any fees and charges applied to the mortgage account before October 2023.
- The fact that Mr and Mrs O have said they are "mortgage prisoners" because they don't have access to the same options as they would if their mortgage lender was regulated.
- The interest rate of the mortgage being too high before 24 April 2024.

- Buildings insurance being applied to the mortgage account before 9 January 2019.

The investigator also noted that Mr and Mrs O had raised some points that were not explicitly addressed by a final response letter but that had been referred to our service too late under our time-bar rules.

He said those complaint points were in relation to:

- Legal fees being applied to the mortgage and whether SPML had the right to take legal action.
- SPML not capitalising the arrears following on from a suspended possession order from December 2016.
- SPML declining Mr and Mrs O's requests to switch the mortgage to repayment – more than six years before this complaint was brought to our service.

The investigator then went on to explain that he thought we would be able to consider the following complaint points:

- The administration of the account where a specific event isn't already addressed within a final response letter that hasn't been referred to our service in time.
- Any fees and charges applied to the account after October 2023.
- The interest rate of the mortgage from 24 April 2024.
- Buildings insurance applied to the account after January 2019.
- Any requests made to SPML to capitalise the arrears after January 2019.

He then went on to address the merits of the complaint and he didn't uphold any aspects of those complaints.

Mr and Mrs O didn't agree with the investigator and in summary, made the following comments:

- They believe the complaint we've looked at is about the wrong business, so we haven't addressed their complaint. They said SPML are not their lender and have had no beneficial interest since 2007. The mortgage was sold with full title to Eurosail who isn't a lender – just five months after they took the mortgage out.
- The investigator has failed to consider key documents that have been provided such as the 2007 mortgage sale agreement, 2007 Prospectus, other customer related documents and Acenden fair processing notice.
- During court proceedings SPML's director confirmed that the mortgage had been securitised so this is a direct admission that SPML have had no beneficial interest in the mortgage since 2007, they have no right to levy arrears or charges in their name and have no lawful standing to have brought possession proceedings in 2016.
- Over £170,000 in charges have been applied to the mortgage account by Acenden who are acting for a company that is not a lender.

- There is new material evidence in the form of a Lasting Power of Attorney (LPA) executed by Eurosail appointing Kensington Mortgage Company as their administrator. This document confirms that SPML are not Mr and Mrs O's lender.

Mr and Mrs O have requested that the Ombudsman:

- Confirm that SPML have had no beneficial interest since 28 November 2007.
- Acknowledge that Acenden act for Eurosail and not SPML, and that misregistration has caused procedural unfairness.
- Remove all unlawful charges, arrears and credit file misreporting.
- Recognise that the 2016 suspended possession order was obtained in the name of a party with no beneficial interest.
- Confirm that their mortgage must be administered transparently by the true beneficial owner.
- Award compensation for over 17 years of detriment and distress.

As Mr and Mrs O have disagreed with the investigator, the case has been passed to me to decide.

I issued a provisional decision on 22 October 2025 setting out that we would be able to consider the following complaint points:

- Any fees and charges, including legal costs applied to the mortgage since October 2023.
- Acenden reporting the mortgage to the credit reference agencies under SPML's name from 2 October 2023.
- The interest rate applied to the mortgage from 24 April 2024, bearing in mind earlier interest rate variations as part of all the circumstances of the complaint. This will include Mr and Mrs O's comments about being mortgage prisoners from this date and changes from LIBOR to SONIA.
- Buildings insurance applied to the mortgage from January 2019.
- Whether SPML should have capitalised the arrears from November 2016

In my provisional decision I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr and Mrs O. But I hope the reasons I have set out below will help

them to understand why I have come to this conclusion.

Fees and charges, including legal costs applied to the mortgage since October 2023.

Having looked at the transaction history, there haven't been any arrears related fees or charges that have been applied to Mr and Mrs O's mortgage account. The last time legal action was taken on the account was in 2016 and the last time legal charges were applied was in early 2017.

I haven't seen any instances of any additional fees and charges being applied to the mortgage account since October 2023.

Acenden reporting the mortgage to the credit reference agencies under SPML's name from 2 October 2023.

Mr and Mrs O have argued that Acenden is reporting the mortgage to the credit reference agencies under SPML's name and they do not feel this is correct. As I have already mentioned, SPML still remains an active company and still holds legal title. Acenden is a trading name of Kensington mortgages. So Acenden, have been reporting the arrears correctly to the credit reference agencies. This part of Mr and Mrs O's complaint is in reference to them not agreeing that SPML is the legal title of the mortgage. I have already found above, as part of our jurisdiction and who is responsible for this complaint – that SPML is the legal title and the correct business.

The interest rate applied to the mortgage from 24 April 2024

I will be looking at the interest rate applied to the mortgage from 24 April 2024 and will bear in mind earlier interest rate variations as part of all the circumstances of the complaint.

The mortgage agreement shows that the interest rate applicable on the mortgage is shown as:

- An initial fixed rate of 6.59% until May 2006, followed by;
- A variable rate of 2.94% above the Bank of England base rate.

Having looked at everything, I haven't seen anything that suggests the interest rate being applied to the mortgage is incorrect. The investigator explained that he used a simple mortgage calculator to see what the contractual monthly payment should have been in April 2024 if the interest rate of the mortgage was the Bank of England base rate plus 2.94%. The result was that he had matched the contractual monthly payment within £10 or so. Having looked at the interest rate that has been charged, I can't agree that Mr and Mrs O are being charged an incorrect interest rate.

Whether Mr and Mrs O are mortgage prisoners and arrears capitalisation

I think the first thing to point out here is that lenders aren't obliged to offer new mortgage products to borrowers. There are regulated mortgage lenders that don't offer new mortgage products and they are known as closed book lenders. SPML is one of these lenders.

If a borrower has a mortgage with a closed book lender – like Mr and Mrs O do here – they won't have access to new products so they would need to consider moving to a new lender if they do require a new interest rate product. That isn't unusual.

If they can't move their mortgage to a new lender because they are in financial difficulty for example, then the current lender or the administrator should help where possible.

I've looked at the transaction history of the mortgage and from January 2019, there hasn't been a month where the mortgage wasn't in arrears by at least four months. By May 2025, the mortgage arrears were equivalent to around 12 months of the contractual monthly payment. On the occasions that Mr and Mrs O said they needed support or a payment arrangement, I'm satisfied that Acenden reviewed their circumstances and agreed to something that they felt was affordable to them.

I appreciate the frustration that Mr and Mrs O have about not being able to move lender or the ability to access a new product with SPML, but I can't agree that they have done anything wrong here.

With regards to the arrears, Mr and Mrs O have said that as part of the SPO from November 2016, the arrears should have been capitalised. As I said above, having looked at the court order from 2016, it wasn't ordered from what I can see, that the arrears should be capitalised. If Mr and Mrs O believe that it should have been, they will need to raise this with the court as it's not something I can interfere with.

In terms of more recent events, I'm not persuaded that capitalising the arrears on the mortgage would be in Mr and Mrs O's best interests. If SPML do this, the contractual monthly payment will increase, and they are already having difficulty maintaining the mortgage payments so I can't see how this would help them.

Buildings insurance applied to the mortgage from January 2019.

I've looked at the transaction history and I'm satisfied that no buildings insurance premiums have been applied to the mortgage. SPML have said that there is an outstanding amount which is due for buildings insurance for £2,184 but these are from before 2015. SPML have also confirmed that no interest has been applied to the balance for this.

I understand that Mr and Mrs O are in a difficult position, but they took this mortgage out in 2007 with SPML who provided her with this mortgage which needs to be repaid. They continue to dispute who the legal title holder of the mortgage is but I haven't seen anything that suggests it's anyone other than SPML. Therefore, SPML are entitled to tell Mr and Mrs O that the mortgage needs to be paid.

Developments

SPML responded and said they agreed with the provisional decision. They also said that Mr and Mrs O didn't complain to them directly about changing the mortgage to repayment, so they've not had a chance to investigate this. They said that Mr and Mrs O can raise this as a new complaint with them if they wish to do so.

Mr and Mrs O responded and didn't agree with what I said. They made the same arguments that they made before about all the reasons as to why they believe that SPML isn't their lender.

Mr and Mrs O requested that the Ombudsman:

- Recognise Eurosail-UK 2007-6NC PLC as the true legal and beneficial owner of Mr and Mrs O's mortgage.

- Accept the 2019 Power of Attorney as conclusive proof that SPML has had no authority since 2007.
- Remove SPML from Mr and Mrs O's mortgage records and cease all correspondence or enforcement in its name.
- Order correction of all credit file entries and reversal of charges, fees and interest levied under SPML's name post sale.
- Confirm that Mr and Mrs O are only liable for the remaining capital balance offered in their settlement, payable directly to Eurosail, with no further interest or charges due and all other charges removed.

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 majority of the points that Mr and Mrs O have made are in relation to them not agreeing that SPML is their lender. I have already issued a decision explaining to Mr and Mrs O that I do not have the power to look into this main part of their complaint as it was brought outside of the relevant time limits.

I have already explained in my provisional decision about how Mr and Mrs O's mortgage is being reported to the credit reference agencies so I have nothing further to add on this. This is still in relation to the fact that Mr and Mrs O do not believe that SPML is their lender. There isn't anything wrong with how SPML are reporting to the credit reference agencies so I will not be asking them to do anything on this point.

I explained in my decision that I was only able to look into the mortgage interest rates from 24 April 2024. Having done so, I explained that I cannot agree that Mr and Mrs O have been charged an incorrect rate of interest for the period of time that I am able to look into.

Mr and Mrs O have said they made a formal settlement offer based on Acenden's own payment breakdown even though they believe SPML is not their lender. They said that Acenden rejected this offer. This point isn't something that has been considered by our service under this complaint so if Mr and Mrs O have an issue with this, they will need to raise this with SPML.

However, I must point out that Mr and Mrs O's mortgage is now in significant arrears, so SPML are entitled to ask Mr and Mrs O to repay this. Based on what I have seen under this complaint, I wouldn't be asking SPML to do anything further. But if Mr and Mrs O have a new complaint about formal offers being rejected, they will need to raise this as a separate matter.

I appreciate that Mr and Mrs O will be disappointed with my decision as they feel very strongly about it, but I am satisfied that SPML have acted fairly and reasonably in the circumstances of this complaint.

My final decision

For the reasons given above and in my provisional decision, I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 15 December 2025.

Maria Drury
Ombudsman