

The complaint

Miss W complains that Mortgage Agency Services Number Five Limited (“MAS5”) has treated her unfairly during her period of financial difficulty. She specifically says that she’s been unfairly overcharged on her mortgage, during a period when it was no longer offering new mortgages.

What happened

Miss W took out her mortgage in 2007 with another lender, GMAC-RFC. She borrowed a total of around £77,500 (inclusive of fees) across several sub accounts. Her mortgage offers show that she agreed to *“a variable rate which is 2.75% above the London Interbank Offered Rate, currently 5.28%, for the term of the mortgage, giving a current rate payable of 8.03%.”*

The loan was later transferred to MAS5 and has been with MAS5 ever since.

In 2008 Miss W’s account fell into arrears. In 2010 MAS5 was granted a suspended order for possession from the courts which has over the years been enforced on several occasions.

Eviction was scheduled for 12 January 2018 but was suspended by the court upon successful application by Miss W to clear the arrears. Miss W repaid the full arrears balance of £9,501.94 on 1 February 2018 bringing her account up to date. However further payments weren’t met, and Miss W’s account has been in and out of arrears since.

At the start of 2020 the arrears on Miss W’s account had accrued again to almost £3,000. In the circumstances MAS5 informed Miss W that it was intending to seek a warrant for possession. Miss W subsequently cleared the arrears and MAS5 cancelled the eviction.

In May 2020 Miss W was in a payment shortfall again. No payments were subsequently made towards the account between July 2020 and March 2021 and contact from Miss W was limited.

MAS5 wrote to Miss W on several occasions to say that if she did not make contact to discuss the arrears on her account, it would send field agents to her property to conduct a face-to-face visit.

In October 2020 a field agent visit took place, however Miss W refused to participate in an interview on the basis that she didn’t feel comfortable letting the agents into her property during Covid-19 restrictions. Miss W said she’d call MAS5 directly to discuss things. A £60 fee was applied to Miss W’s account for the unsuccessful visit.

Miss W called MAS5 as agreed to discuss her circumstances. She said she had been furloughed by her employer since March 2020 and her lodger had stopped paying rent. As a result, her income had reduced to £900, and she was unable to afford her mortgage. She thought the Covid-19 payment deferral would be automatically applied to her account.

MAS5 said it was willing to consider a backdated payment deferral to March 2020 to help Miss W reduce the arrears on her account. It said to do so, it needed Miss W to complete an income and expenditure form to assess her circumstances at the time.

Further calls took place, but it wasn't until 17 May 2021 that Miss W called back with the necessary information. During this time her mortgage payments weren't maintained.

MAS5 applied the backdated payment deferral reducing the arrears on Miss W's account to around £748. Miss W proposed to pay an extra £125 on top of her contractual monthly payment to help reduce the remaining arrears. MAS5 agreed to Miss W's proposal and a letter detailing the terms of the arrangement was sent to her.

Several months later Miss W broke the terms of the arrangement. She stopped making regular payments or maintaining regular contact with MAS5. MAS5 wrote to Miss W to say that it intended on seeking a warrant for possession.

MAS5 arranged another field agent visit in March 2022. Miss W refused entry again due to concerns over Covid. A £72 fee was applied to Miss W's account for the unsuccessful visit.

Miss W subsequently made a complaint to our service on 13 March 2023. Her main complaint was about being overcharged on her mortgage account. She said that she'd seen information on MAS5's website about an investigation into unfair standard variable rate (SVR) increases.

Miss W said that she feels like a mortgage prisoner since her mortgage transferred to MAS5. She is unhappy with the lack of support she says she's received from MAS5 and what she considers to be constant bullying and threats to take possession of her property. Miss W says that MAS5 hasn't made any reasonable adjustments to accommodate her health needs. She says that due to a long-standing medical condition she often loses her voice due to an ongoing cough and finds it difficult to talk over the phone. She says MAS5 has offered no other alternative way of making contact and she's being penalised for that.

Lastly, Miss W has said that she is unhappy that she's been charged field agent fees on several occasions although an appointment never took place.

We referred Miss W's complaint to MAS5 on her behalf. MAS5 responded to the complaint. It said that part of Miss W's complaint had been made too late. It said that it did not consent to the Financial Ombudsman Service looking into any complaint about events that occurred more than six years before the complaint was made. MAS5 went on to consider part of Miss W's complaint about events that were complained of within the last six years. It's didn't uphold Miss W's complaint.

An investigator at our service looked into things and agreed that part of Miss W's complaint was time-barred. The investigator went on to provide his opinion on Miss W's complaint about events within the last six years. He didn't think the complaint should be upheld.

Miss W didn't agree that we can only consider part of her complaint. I issued a decision explaining why I was satisfied that I only have the power to consider Miss W's complaint about events that have occurred in the six-year period leading up to her complaint being made on 13 March 2023 – so anything from 13 March 2017 onwards.

Before passing the case to an ombudsman for a decision, the investigator offered Miss W an opportunity to provide any further submissions for our consideration. Miss W has not responded to add anything further. As such I will now proceed to issue my final decision on this case.

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.

I've considered each of Miss W's complaint points in turn.

Has Miss W been charged an unfairly high rate of interest?

In her complaint to our service, Miss W she says that she's unhappy with the way MAS5 has set its SVR over the years. Miss W's mortgage is on a lifetime tracker product. Her mortgage offer says that her interest rate will track 2.75% above the London Interbank Offered Rate ("LIBOR"). So the mortgage has never been subject to MAS5's SVR.

LIBOR is an interest rate benchmark used in financial markets. By the end of 2021 LIBOR was withdrawn and replaced by the Sterling Overnight Index Average ("SONIA").

As Miss W's mortgage terms and conditions did not provide MAS5 with the unilateral right to replace LIBOR with a chosen replacement rate, it needed Miss W's consent first by signing a Variation Agreement. However, as Miss W did not consent to this change, her replacement reference rate reverted to a synthetic LIBOR, which is set by the Financial Conduct Authority (FCA).

The FCA issued guidance about what a fair replacement rate for LIBOR would be, and I'm satisfied that the replacement rate offered by MAS5 is in line with that guidance. The regulator's guidance is one of the things I must take into account in deciding what, in my opinion, is fair and reasonable in the individual circumstances of the complaint. The changes are also in line with what other lenders have done. In view of those things, I am satisfied that MAS5 acted fairly and reasonably in changing the reference rate on Miss W's mortgage and having considered everything I'm satisfied MAS5 has varied Miss W's mortgage in line with her contract and she has been charged the right payment amounts over the years.

Has Miss W been unfairly denied access to a new interest rate product ("mortgage prisoner")

Miss W complains that she is a "mortgage prisoner". The Financial Conduct Authority (FCA) defines mortgage prisoners as "borrowers who are up to date with payments and cannot switch when it might benefit them to do so".

Soon after Miss W took out her mortgage, it was transferred to MAS5. MAS5 therefore took over from GMAC as the regulated firm which owns Miss W's mortgage and acts as her mortgage lender. Such a transfer is permitted under the terms and conditions and therefore MAS5 was now legitimately Miss W's lender.

MAS5 is a closed book lender – it is a vehicle for holding loans originated elsewhere that have later been transferred to it. MAS5 manages its existing portfolio of loans but has never been an active lender seeking customers in its own right on the open market. And while it allows customers to make changes to existing mortgages, these do not include changing the interest rate – MAS5 has no fixed or other preferential rates available to any customers. All customers whose initial rates expire then remain on their contractual reversion rate unless and until they pay their mortgage off or re-mortgage away to a different lender.

It is generally expected that new interest rates are available when an old one expires – but there's no regulatory or contractual right to a new rate. So, in light of all of the above, I don't think MAS5 has done anything wrong in not offering a new rate to Miss W.

Although MAS5 cannot provide its customers with different interest rates, in light of the FCA voluntary scheme and as a subsidiary of The Co-operative Bank Plc, since November 2019, MAS5 has been able to offer its customers the opportunity to apply for an 'internal re-mortgage' to a Britannia branded mortgage. At this time it was required to issue customers a "mortgage prisoner" letter, if they were eligible for one, to help them do so.

In these circumstances I don't think MAS5 was required to send Miss W a "mortgage prisoner" letter – which would enable a new lender to apply a modified affordability assessment to their application – because she was not eligible. This was because she had not been arrears free for the last twelve months – at the time the FCA set out this requirement.

If Miss W was unhappy with the interest rate being charged on the mortgage, upon providing one month's notice, she was free to redeem the mortgage without incurring an early repayment charge (ERC) after 15 January 2010.

That said, I appreciate Miss W has struggled to maintain her mortgage over the years. This is largely because of her personal circumstances – she has faced financial difficulty since 2008 and has suffered with her physical and mental wellbeing. Miss W's inability to maintain her mortgage and problems this would cause to her wider credit history, means it was quite unlikely that she could move to another lender and for this reason she considered herself "trapped" with MAS5.

It's clear from all the information I've seen that Miss W has been through an extremely difficult time. I truly empathise with her circumstances. But for the reasons I've given, I don't think MAS5 has unfairly refused Miss W a new mortgage product, nor can I reasonably hold it responsible for Miss W being unable to re-mortgage with a different lender. And so it follows that I don't uphold this part of the complaint.

Has Miss W been treated unfairly by MAS5 during her period of financial difficulty?

The regulator of financial services, the FCA sets out rules for lenders that it expects them to abide by. The rules can be found in the FCA's Handbook, available online, in the chapter headed MCOB.

These rules require lenders to treat borrowers facing financial difficulty fairly, to try and ensure the mortgage can be paid and to ensure repossession is a last resort. The rules require lenders to consider what forbearance options are appropriate in the circumstances of the individual customer.

The rules also state that in doing so, the lender must ensure that any agreed arrangement or variation made to the mortgage must be affordable for the customer. The starting point is for a lender to carry out an affordability assessment, to determine ability to repay the mortgage.

The difference between the possible forbearance options available depends on whether the consumer is experiencing short-term or long-term financial difficulty. And in any event, there must be prospect of the customer's circumstances improving and them being able to get their mortgage back on track and being able to repay it by the end of the term.

In considering this complaint, I've considered whether MAS5 has acted, as I'd expect, in accordance with the rules. When considering everything, I've not seen anything to suggest MAS5 has acted unfairly in the circumstances. I'll explain why.

In summary Miss W complains that MAS5 is using the possession order it holds to bully her and she believes it is only interested in taking possession of the property.

For the reasons I've explained, I'm only able to look into MAS5's actions from 13 March 2017 onwards. That said, to understand the whole picture, I must take into account the previous history of Miss W's accounts and events that predate 13 March 2017.

Miss W has had trouble paying the mortgage since 2008. In 2010 MAS5 was granted a possession order from the courts. The possession order was suspended on the agreement that Miss W would maintain her contractual monthly payments plus an extra £250 per month to repay the arrears of £3,261.45.

Once the order was granted it became enforceable if the terms stated within were not adhered to. I think it's important to note that in these circumstances, even if the borrower clears their arrears – and later falls back into arrears – the possession order is still enforceable by the claimant to proceed to eviction. The only way the court order can be revoked is through the defendant applying for a discharge of the possession order through the courts.

Unfortunately, over the years, Miss W's circumstances haven't improved. The pattern of events has remained broadly the same to date. Several plans have been put in place to support her with her payments. But those plans often haven't been met. Miss W's payments have been sporadic, and her account has been in and out of arrears since.

There have been several periods where payment haven't been made for months at a time leading to a large amount of arrears accruing. Notably, no payments were made at all during 2016, no payments were made for five months between June 2019 and October 2019, no payments were made for 10 months from July 2020 through to March 2021 and for seven months from November 2021 to May 2022.

There have been occasions where Miss W has made lump sum payments to clear the arrears and as a result legal action has been stopped. But unfortunately, a spiral of missed payments would surface again and the account would shortly fall back into arrears. There have also been long periods where Miss W has stopped engaging with MAS5 and she has not kept it up to date with her situation.

When Miss W has engaged about her circumstances, I think MAS5 has responded empathetically, and it has offered her a reasonable amount of support to help get the account back on track. However, as I've explained there were several occasions where long periods passed without Miss W making payments towards her account or maintaining contact to keep MAS5 updated about her circumstances.

Over the years MAS5 has sought to enforce the court order on several occasions due to lack of payment and contact from Miss W about her account. Having a look over the account history, I don't find that MAS5 has unfairly initiated legal action or that it has used bullying tactics as suggested by Miss W.

It's clear from what I've seen that Miss W has not been able to afford her mortgage for some time. She has been experiencing periods of financial difficulty since at least 2008. In these circumstances where there is little prospect of the account getting back on track and it's not affordable for the borrower to repay by the end of the term, the borrower may need to think about selling their home. This is something that Miss W was considering in 2017-2018 but she later pulled the property from the market after identifying Japanese Knotweed that she was told made the property unmortgageable.

If possession is considered necessary as a last resort (which was the case here) then the lender has a duty to avoid any delay and protect all parties to the mortgage from the consequences of further non-payment. This includes the accrual of additional interest on arrears, fees and costs and the reporting of arrears to the credit reference agencies. All of which can negatively impact the remaining equity in the property following its sale.

When considering the overall management of the account, I don't think it was unreasonable for MAS5 to consider enforcement action when it did and so I don't find that it has acted unfairly or unreasonably in the circumstances.

Has Miss W been charged unfair field agent fees?

Miss W has specifically complained that she's been charged unfair field agent fees over the years, even though the appointments didn't take place. On each occasion, Miss W said that she didn't feel comfortable speaking to the agents due to personal circumstances and/or because of health concerns during the Coronavirus restrictions.

I can see that since 13 March 2017 up until the point Miss W raised her complaint, she'd been charged a field agent visit fee four times. She was charged a fee in September 2017, October 2019, November 2020 and in March 2022.

On each occasion when MAS5 appointed field agents, it did so after periods of non-payment and lack of contact from Miss W. In these circumstances I don't think it was unreasonable for MAS5 to appoint field agents to physically attend the property as a way of making in person contact with Miss W to discuss her account.

On each occasion Miss W was sent a letter informing her of the costs involved. The letter explained that a cost of £50 plus VAT (later increased to £60 plus VAT) would apply in circumstances where the agent visit was cancelled but visits to the property had taken place.

The letter explained that to avoid the field agent visit, Miss W would need to make contact with MAS5 to discuss her account ahead of time. Because this didn't happen, field agents were appointed. I can understand why Miss W didn't feel comfortable with the appointments going ahead and it was her prerogative to refuse entry into her home. But that said, I can't say it was unreasonable for the fees to be added to Miss W's mortgage account as pre-warned. This is because the third-party agents charged a fee in those circumstances, and it was not unreasonable for MAS5 to pass those fees onto Miss W.

Miss W has explained that due to her ongoing cough she often doesn't have the voice to call and speak to MAS5. She says that by not offering other means of contact, MAS5 has failed to make reasonable adjustments and she's being penalised for that. I can see from MAS5's contact notes that in January 2019 Miss W told it that she needed an operation to address an ongoing cough. But I can't see that she asked for any reasonable adjustments to be made to accommodate her health condition. Therefore, I can't say that MAS5 ought to have done anything differently in the circumstances, nor can I hold it responsible for not making any changes to the way it communicates with Miss W without her asking. If this is something Miss W would like going forward – she will need to tell MAS5 what reasonable adjustments she feels she needs, and MAS5 should consider the request if reasonable.

So, to conclude, when considering everything I've not seen enough to suggest that MAS5 has overcharged Miss W on her mortgage or that it has treated her unfairly over the years during her period of financial difficulty.

My final decision

My final decision is that I don't uphold Miss W's complaint against Mortgage Agency Services Number Five Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 22 August 2024.

Arazu Eid
Ombudsman