

The complaint

Mr and Mrs G complain that the interest rate Mortgage Agency Services Number Five Limited (MAS5) has charged on their mortgage has been unfairly high. They also complain they've not been able to take out a new interest rate product.

What happened

Mr and Mrs G took out an interest only mortgage in December 2005 with a term of 25 years. The mortgage offer stated that a fixed interest rate of 4.94% would be applied to the mortgage until 31 December 2008, at which time the mortgage would revert to the standard variable rate (SVR) for the remaining term, which was 6.49% at the time of the offer.

In 2007, Mr and Mrs G's mortgage was transferred to MAS5.

Since Mr and Mrs G's mortgage reverted to the SVR in 2009, I understand the interest rate MAS5 charged was as follows:

Date	SVR
01/01/2009	4.99%
13/01/2009	3.99%
24/02/2009	3.99%
17/03/2009	3.49%
01/04/2009	2.99%
01/07/2009	3.74%
01/10/2009	4.50%
01/03/2011	5.25%
01/05/2012	5.75%
01/09/2016	5.50%
01/12/2017	5.75%
01/09/2018	6.00%
01/04/2020	5.50%
01/05/2020	5.35%
01/02/2022	5.50%
01/03/2022	5.75%
01/05/2022	6.00%
01/06/2022	6.25%
01/08/2022	6.50%
01/12/2022	6.88%

01/02/2023	7.38%
01/03/2023	7.88%
01/05/2023	8.13%
01/07/2023	8.38%

On 5 February 2021, Mr and Mrs G complained to MAS5 about the interest rate it had charged on their mortgage. MAS5 issued a final response letter on 30 March 2021. MAS5 said that Mr and Mrs G's complaint about the interest rate charged on their mortgage more than six years ago had been made outside of the time limits.

MAS5 said it had already responded to complaints from Mr and Mrs G about the SVR charged on 23 March 2011, 11 June 2012 and 19 September 2016. It said Mr and Mrs G had been told in each of these responses that they had six months from the date of each letter to refer the complaint to our Service. But they hadn't, so it said our Service didn't have permission to look into the complaints.

In general, MAS5 said its SVR is a reflection of the current financial market and remains comparable to other financial institutions.

MAS5 also explained that as it was no longer an active lender, it was not accepting new customers. Nor was it able to offer existing customers alternative interest rate products. However, since November 2019 it has been able to offer customers the opportunity to apply for an 'internal re-mortgage' with a different lender within its group. This is undertaken through a different and more proportionate affordability assessment, although is still subject to meeting the lender's current lending criteria.

MAS5 said part of this re-mortgage criteria is that borrowers have a mortgage that is free from arrears for at least 12 months, but Mr and Mrs G's mortgage had consistently been in arrears since August 2016. So they weren't able to re-mortgage.

Mr and Mrs G brought their complaint to our Service on 21 August 2021 with the help of a professional representative. Mr and Mrs G have since removed their representative and are bringing the complaint on their own.

MAS5 initially thought that Mr and Mrs G hadn't referred their complaint to us within six months of issuing its latest final response. But it has since accepted that wasn't the case.

MAS5 has also said that any of Mr and Mrs G's complaint relating to events and decisions about the interest rate applied to the mortgage before 19 September 2016 when it issued its most recent final response with regards to the interest rate charged had also been brought out of time and they didn't give our Service consent to consider it. It also said our Service could only consider interest rate variations that took place before 19 September 2016 as background or context to the part of Mr and Mrs G's complaint that has been made in time.

Our Investigator looked into things and explained that as Mr and Mrs G's complaint was about the interest rate MAS5 had charged each month, she could consider the fairness of the interest charged each month for the time period following the final response letter of 19 September 2016 (so from 20 September 2016 onwards) leading up to Mr and Mrs G's complaint on 5 February 2021.

She said that Mr and Mrs G's complaint about the interest rate charged earlier than that was out of time under the time limits our Service must apply. The Investigator wasn't persuaded that the complaint was made outside of the time limits as a result of exceptional circumstances.

Mr and Mrs G have said they've been complaining about this issue for years and thought they'd contacted us sooner. But they couldn't evidence this. Our Investigator could find no evidence of earlier contact from Mr and Mrs G with regards to interest rate complaints.

The Investigator said that when considering Mr and Mrs G's complaint about the fairness of the interest rate charged from 20 September 2016 onwards, she would consider the whole history of the mortgage as relevant background to the complaint. She thought any decisions MAS5 made to vary the interest rate before 19 September 2016 would have impacted the fairness of the rate charged after that date. She was satisfied that approach was in line with our rules and a recent decision of the High Court on our Service's jurisdiction in cases like this one.

The Investigator went on to look at the merits of the parts of Mr and Mrs G's complaint that she thought our Service could consider. She didn't think MAS5 had acted unfairly by not offering Mr and Mrs G a new interest rate product on expiry of their fixed rate that ended in 2008. She said there wasn't anything in the offer, or terms and conditions of Mr and Mrs G's mortgage that said MAS5 would make a new rate available to them. And there's nothing in the rules of mortgage regulation that says it had to do that either. MAS5 didn't offer new interest rate products to any of its customers. So she didn't think Mr and Mrs G have been treated less favourably than others.

The Investigator looked at the history of the interest rate Mr and Mrs G had been charged on their mortgage in order to decide whether MAS5 had charged them fairly from 20 September 2016 onwards. When the mortgage was transferred to MAS5 from the original lender, one of the terms of the transfer agreement was that the SVR charged on the mortgage would not be more than 2% above the Bank of England base rate. MAS5 had referred to this agreement as the restrictive covenant (as I now will). That restrictive covenant came to an end in 2009.

MAS5 had said it'd increased the SVR in 2009, 2011 and 2012 as a result of an increase in their costs of funds. But the evidence provided showed that MAS5's costs of funds weren't increasing at that time. Whilst she didn't have the power to consider Mr and Mrs G's complaint about those specific increases as that was out of time, she did think those increases were not made for reasons permitted under the terms and conditions. And they did impact the fairness of the SVR Mr and Mrs G were charged from 20 September 2016 onwards, as the level of the SVR charged was the cumulative history of all changes that went before.

Our Investigator thought it wasn't fair and reasonable for MAS5 to charge Mr and Mrs G interest after 20 September 2016 that reflected the 1.25% increases in 2011 and 2012. But she didn't think it would be fair to reach the same conclusion about the 2009 increases, because that would have had the effect of continuing the benefit of the restrictive covenant after it ended. And therefore, put Mr and Mrs G's mortgage on a lower interest rate than they could have expected from the operation of their mortgage terms and conditions alone. As a result, she said removing the effect of the 2009 increases would over-compensate Mr and Mrs G. The Investigator didn't think any of the changes made to the SVR after 2016 were unfair.

To put things right the Investigator said, in summary, that MAS5 should re-work Mr and Mrs G's mortgage account as if the interest rate charged after 20 September 2016 was 1.25% lower than it was from time to time. It should also ensure the interest rate was reduced by 1.25% going forwards – though MAS5 could continue to vary the interest rate in the future if permitted to do so by the terms and conditions.

She said that MAS5 should apply any refund to reducing Mr and Mrs G's mortgage arrears. And, if anything remained, Mr and Mrs G should have the choice of either having the resulting overpayments they'd made each month treated as overpayments to reduce the mortgage balance, or having them refunded to them, adding simple annual interest of 8%

running from the date of each overpayment to the date of refund. She also thought that MAS5 should pay Mr and Mrs G £200 compensation for the distress and inconvenience the matter had caused.

MAS5 disagreed that the 1.25% reduction should be applied beyond November 2022. It said its decisions not to pass on the Bank of England base rate increases between December 2021 and November 2022 balanced out the increases in 2011 and 2012 that the Investigator found were unfair. It said in December 2021, the base rate increases were not passed on immediately. And then in August and September 2022, base rate increased by 0.5% each time but MAS5 chose not to pass on those increases to SVR customers. In November 2022 base rate increased by 0.75% and MAS5 took the decision to only pass on 0.38% to SVR customers. That meant a total of 1.37% was not passed on to MAS5 customers in 2022 despite MAS5 having the right under condition 3.1(a) of the terms and conditions to pass all of those increases on. MAS5 said that 1.37% exceeds the 1.25% reduction the Investigator said it should make to the rate.

MAS5 also said the Investigator should consider the passage of time between the interest rate increases in 2011 and 2012, and the period of time that fell within our Service's jurisdiction to consider (from 2016 to 2021). It said arguably, the increases that took place in 2011 and 2012 had little causative effect on the rate Mr and Mrs G were paying from 2016 onwards. MAS5 made an offer to settle Mr and Mrs G's complaint on the basis that the 1.25% reduction in the rate would be made from 20 September 2016 to the end of November 2022.

Mr and Mrs G responded multiple times raising a number of points. They questioned the time limits applied, and they thought that £200 wasn't fair compensation. Mr and Mrs G also raised further points about how they'd been treated during the period they'd been in arrears and the fact that they'd recently asked MAS5 to change their mortgage back to interest only, and MAS5 hadn't responded.

Our Investigator told Mr and Mrs G that complaints about how they'd been treated whilst in arrears had already been considered by our Service and were subject to two separate Ombudsman decisions. She explained we couldn't revisit these complaints. She said that if Mr and Mrs G wished to complain about how MAS5 had treated them since the most recent final decision, they'd need to raise this as a new complaint.

The Investigator also explained that Mr and Mrs G would need to raise a new complaint about MAS5 refusing to change their mortgage to interest only and that we couldn't consider this complaint point as part of this complaint as this had occurred since the complaint about the interest rate had been referred to our Service.

In the meantime, MAS5 made an interim offer of settlement to repay the interest the Investigator thought had been overcharged as set out in her view. Mr and Mrs G asked if, because of their circumstances, they could have this payment made directly rather than used to reduce their arrears. They said they wished to sell their property and repay the mortgage but needed the funds to help them do so. MAS5 agreed to do so, but it said it shouldn't have to add on 8% simple interest if this was paid directly to Mr and Mrs G. Our Investigator agreed this was fair. Mr and Mrs G still thought they should receive 8% interest, but the interim payment was made to them without it being added.

Our Investigator considered what MAS5 had said about the reduction in the interest rate going forward. She wrote to both parties setting out how she thought MAS5 should put things right having considered all the evidence and MAS5's latest arguments.

She thought that had the SVR been 1.25% lower than it was prior to August 2022, MAS5 would have likely passed on the base rate increases as allowed under the terms and conditions of Mr and Mrs G's mortgage after this date. That would have resulted in the SVR ending up in much the same position as it actually was from November 2022 onwards. The Investigator was satisfied that as a result, from November 2022, the SVR was no longer

higher than it should have been and said that to put things right, MAS5 should re-work Mr and Mrs G's mortgage as if the interest rate charged after 20 September 2016 was 1.25% lower than it was from time to time until 30 November 2022.

Mr and Mrs G didn't accept this. They said their mortgage rate was now far too high and had continually risen over the years. They said they remained stuck with an unaffordable interest rate and maintained that they still hadn't heard from MAS5 regarding their mortgage changing to interest only. Mr and Mrs G also said the compensation for the distress and inconvenience was still far too low.

Mr and Mrs G asked for their complaint to be referred to an Ombudsman. So, it's been passed to me to review and 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.

Our jurisdiction to consider this complaint

I've first thought about what parts of Mr and Mrs G's complaints I'm able to consider here. Having done so, I agree with the Investigator that our Service only has the power to consider Mr and Mrs G's complaint about the interest rate MAS5 have charged them since 20 September 2016.

Mr and Mrs G have made a number of complaints about the interest rate they've been charged over the years. The most recent was responded to by MAS5 on 19 September 2016. Each final response provided by MAS5 told Mr and Mrs G that they had six months from the date of the letter to refer their complaint to our Service.

I've seen nothing to suggest that they did refer a complaint about the interest rate prior to this. We haven't been made aware of any exceptional circumstances that caused the delay in the complaint being made. And I note that Mr and Mrs G have referred other complaints to us over the years about both MAS5 and other businesses. So, I can't say the delay was a result of exceptional circumstances. For these reasons, I'm only able to consider then interest rate charged to them since 20 September 2016.

However, as the Investigator explained, the interest rate charged from 20 September 2016 onwards is the result of the cumulative rate changes that took place beforehand. And so, it is therefore appropriate for me to consider the interest rate history of Mr and Mrs G's mortgage account dating back to when it was taken out in 2005, to determine whether the interest rate MAS5 have charged them from 20 September 2016 onwards was fair and reasonable.

I'd also note at this stage that Mr and Mrs G have also, during their correspondence with us, mentioned complaints they have about how they've been treated whilst their mortgage account has been in arrears. And their more recent request to change their mortgage to an interest only basis. As our Investigator explained, Mr and Mrs G have had two final decisions on how they've been treated whilst in arrears. I'm not able to revisit or overturn these decisions. If they wish to make a complaint about how they've been treated since the most recent of these decisions, they'd need to first raise this with MAS5.

The complaint about the mortgage being changed back to interest only seems to be related to a matter that occurred since this complaint was first referred to us. Again, Mr and Mrs G need first refer this complaint to MAS5 and after it provides a final response, we will be able to look into this matter separately.

Should MAS5 have offered Mr and Mrs G a new interest rate product?

Mr and Mrs G's mortgage offer said that on expiry of the fixed rate product, from 31 December 2008 the rate that would apply was the SVR for the remaining term of the mortgage. There was nothing in the rest of the offer document or the terms and conditions of

the mortgage that stated Mr and Mrs G would be entitled to a new fixed rate once their initial rate had ended.

Since Mr and Mrs G's mortgage has been on the SVR, MAS5 have not offered any new or preferential interest rate products to any of their customers. There's nothing in the law, or the regulator's rules that requires lenders to offer new products or rates. Since Mr and Mrs G's mortgage has been on the SVR, they wouldn't have incurred any early repayment charges if they'd decided to re-mortgage elsewhere to a lender that does offer rates.

Overall, MAS5 hasn't treated Mr and Mrs G any differently to any of their other mortgage customers by not offering a new interest rate product. They've contacted them in more recent years about applying for an internal re-mortgage to another lender within the banking group. But they've been in arrears since 2016, so haven't been eligible for this.

Considering all the circumstances, I'm not satisfied MAS5 has treated Mr and Mrs G unfairly by not offering them a new interest rate product.

The interest rate MAS5 have charged on Mr and Mrs G's mortgage

MAS5 has made an offer to settle Mr and Mrs G's complaint by re-working their mortgage account as if the interest rate charged between 20 September 2016 and 30 November 2022 was 1.25% lower than what MAS5 did actually charge. It says that would put right the higher rate Mr and Mrs G paid from 20 September 2016 as a result of the increases made to the SVR in 2011 and 2012. It doesn't think the redress should go beyond November 2022 as from that point, Mr and Mrs G have been charged a rate that is 1.38% less than what it would've been had it decided to pass on the full increases to the base rate that year. Mr and Mrs G say that redress is unfair. They say they are still left with an interest rate they consider is too high and unfair. I'll address the changes to the SVR in the order they occurred.

The SVR increases in 2009

Mr and Mrs G's mortgage was not taken out with MAS5 originally. In 2007 the mortgage was transferred to MAS5 by the originating lender. At the time of the transfer, there were certain terms that were agreed between the two businesses, one of which was an agreement that the SVR MAS5 charged on the mortgage would not be more than 2% above the Bank of England base rate - the restrictive covenant I've previously mentioned. That term did not form part of the contract between Mr and Mrs G and the lender, it was an agreement between the two businesses and did not alter the original terms and conditions that Mr and Mrs G agreed to when they took out their mortgage.

The terms and conditions of Mr and Mrs G's mortgage said that the lender could vary the standard variable rate for the following reasons:

“(a) to reflect a change which has occurred, or which we reasonably expect to occur, in the Bank of England base rate or interest rates generally;

(b) to reflect a change which has occurred, or which we reasonably expect to occur, in the cost of the funds we use in our mortgage lending business;

(c) to reflect a change which has occurred, or which we reasonably expect to occur, in the interest rates charged by other mortgage lenders;

(d) to reflect a change in the law or a decision by a court; or

(e) to reflect a decision or recommendation by an ombudsman, regulator or similar body.”

Mr and Mrs G's mortgage offer stated that the interest rate that applied to their mortgage would be a fixed rate of 4.94% until 31 December 2008, after which the SVR would apply for the remaining term of the mortgage. There was nothing in the terms that stated the interest rate would be linked to any particular reference rate, and it was not a tracker rate that would track movements in any base rate.

The Bank of England base rate fell significantly during 2008 and 2009, and as a result of the restrictive covenant, the SVR MAS5 charged to their mortgage customers reduced significantly too.

The agreement MAS5 had in place to charge an SVR no higher than 2% above base rate ended in 2009, and that is when it started to increase the SVR. Those increases did impact Mr and Mrs G's mortgage, as the increases resulted in the rate that Mr and Mrs G's mortgage reverted to in January 2009, and the rate charged on their mortgage since. MAS5 has said the increases made to the SVR in 2009 were because of an increase that had occurred in the cost of funds used in its mortgage lending business. MAS5 sent us evidence to support arguments about that, but I'm not satisfied the evidence provided does show that MAS5's cost of funds had increased at that time.

However, I also have to consider what is fair and reasonable in all the circumstances. Having done so, I'm not satisfied it would be fair and reasonable for MAS5 to reduce Mr and Mrs G's interest rate as if those increases in 2009 had not taken place.

Whilst interest rates fell generally during 2008 and 2009 as a result of the financial crisis, the SVRs charged to mortgage customers within the banking group MAS5 operated in, as well as the wider market, did not fall by the same proportions as the base rate. That is for a variety of reasons, but generally the costs to firms of funding their mortgage business did not reduce by as much as the base rate did, and their prudential requirements changed.

Having considered the information MAS5 has sent us, as well as our knowledge and understanding of how the mortgage market was operating at that time, I think it's likely that had the restrictive covenant not been in place during that period, the SVR MAS5 would have charged during 2008 and 2009 would not have reduced by as much as it did. As explained, there was nothing in the terms and conditions of Mr and Mrs G's mortgage that linked the SVR to the base rate, and whilst the terms allowed MAS5 to vary the SVR following changes to base rate, they didn't say it must do so.

The effect of the restrictive covenant meant that the SVR MAS5 was charging mortgage customers was lower than it would have been had the covenant not been in place. As a result, MAS5 customers received the benefit of paying a lower reversionary rate than they would've been charged by most other lenders at that time had the covenant not been in place.

Whilst MAS5 may have increased the SVR when the covenant ended for reasons that weren't permitted under the terms and conditions of Mr and Mrs G's mortgage, it was restoring the rate to what it would have been had the covenant not been in place.

It's important to remember that a complaint about the interest rate variations that took place in 2009 is actually out of time and our service doesn't have the power to consider it. I'm only taking account of what happened to the rate at that time as I think it's relevant to determine whether the rate Mr and Mrs G have been charged since 20 September 2016 is fair and reasonable.

While MAS5 may not have had any contractual justification for increasing the SVR once the covenant came to an end, I have to take all the wider circumstances into account when thinking about what's fair and reasonable more broadly during the period I can consider. And for the reasons I have given, I am satisfied that directing MAS5 to essentially deduct the 2009 increases from interest charged from 20 September 2016 onwards would provide Mr and Mrs G with a level of compensation that goes beyond what is fair and reasonable in

view of how long ago the changes were made. And the fact that those increases would not have been necessary had MAS5 been able to vary the rate in line with the terms and conditions Mr and Mrs G agreed to without the covenant in place. To do so would result in the interest rate after 20 September 2016 being lower than Mr and Mrs G could have expected it to be by operation of the mortgage terms and conditions alone and would result in over-compensation.

The SVR increases in 2011 and 2012

MAS5 increased the SVR charged on Mr and Mrs G's mortgage in 2011 and 2012. The effect of both of those changes meant the rate went from 4.5% to 5.75%.

MAS5 said those increases were made as a result of the increases in the cost of funds used in their mortgage lending business. I am not satisfied that the evidence MAS5 has sent us shows that there was actually an increase in MAS5's own cost of funds at that time. It's now offered to re-work Mr and Mrs G's mortgage account from 20 September 2016 (up until November 2022) as if those increases never took place. So I won't consider this point any further, as the offer puts Mr and Mrs G back in the position they would have been in had the increases not been made (for the time period that is in scope of this complaint).

Should the redress go beyond November 2022?

MAS5 has offered to re-work Mr and Mrs G's mortgage account as though the interest rate they've been charged since 20 September 2016 was 1.25% lower than it was to reverse the effect of the 2011 and 2012 increases – but only up until the end of November 2022.

It's said this is because it made the decision in 2022 not to pass on the full Bank of England base rate rises to customers when it could've done. That resulted in the SVR being 1.38% lower than it would have been had it passed on the full extent of the increases. MAS5 says if the SVR had in fact been 1.25% lower than it was before 2022, as we've said it should have been, it would have taken the decision to pass on all of the base rate rises when they took place in 2022. This would have ensured that the SVR was priced at an appropriate level for its risk profile and market position. Therefore, the rate would have ended up 0.12% higher than it actually was in December 2022.

MAS5 has provided our Service with evidence to support these arguments, including the factors the wider banking group considered when deciding whether to pass on the base rate rises to customers in 2022. It's clear the priorities for the banking group were to balance increases to the SVR to reflect increases to cost of funds with keeping down increases to maintain their market position, and to minimise customer stress.

While that wasn't the case specifically for Mr and Mrs G's mortgage – since there's no evidence of a change in the costs of funding MAS5 itself at this time, the position of the MAS5 SVR comparative to the SVR charged to 'prime' customers in the group was also a key factor.

If the MAS5 SVR had been 1.25% lower than it actually was, it would've been lower than the SVR charged by other lenders within the group, as well as other lenders in the wider prime mortgage market.

Having considered the evidence MAS5 has provided, I'm satisfied that on balance, if the SVR had been 1.25% lower than it was at the start of 2022, MAS5 would have increased the SVR by more than it did during 2022, by passing on all of the base rate rises. And, that would have been permitted under the terms and conditions of Mr and Mrs G's mortgage.

However, whilst I'm persuaded it's likely that's what MAS5 would have done, I still have to consider whether that would have been fair and reasonable to decide whether the offer MAS5 have made is a fair resolution.

It is not the role of our service to decide what a fair interest rate should be. But, I can decide whether MAS5 have acted fairly when considering how to vary the rate they've charged Mr and Mrs G, and the impact that's had on them.

MAS5 has provided evidence of the risk profile of the mortgages they hold in comparison with the banking group's 'prime' mortgages. I'm satisfied this information shows a greater cost to the group when a MAS5 mortgage defaults, and there is a much higher risk of those mortgages defaulting. I therefore don't think it unreasonable MAS5 considered that risk when deciding where its SVR should sit, not only in relation to the 'prime' SVR charged by other lenders in the group, but also in relation to the wider mortgage market. I'm satisfied that had the SVR been 1.25% lower than it was, and MAS5 had not decided to pass on the base rate rises in 2022, the resulting SVR would have been significantly lower than not only the group's 'prime' SVR, but also the SVRs charged by mainstream lenders in the wider market.

Under the terms and conditions of Mr and Mrs G's mortgage MAS5 was entitled to increase the SVR to reflect changes in base rate. I think it's more likely than not that if the SVR had been 1.25% lower because the 2011 and 2012 increases had not happened, MAS5 would have passed on the base rate changes in 2022 to move the SVR to a level comparable with other lenders in the group. So, from November 2022, the SVR ended up at broadly the same level it would have been even without the 2011 and 2012 increases.

When considering the SVR Mr and Mrs G have been charged since 20 September 2016 overall, and the impact of the previous unfair increases that resulted in that rate, I think it's most likely that any previous unfairness was essentially 'put right' by the decisions MAS5 made when it varied the rate in the way that it did in 2022. And so, to tell MAS5 to make an ongoing reduction to Mr and Mrs G's interest rate when that rate would be much lower than the rate they would actually have been on had MAS5 not done anything wrong, would be putting them in a better position.

I say this because, if I were to continue the redress beyond November 2022, it would have the effect of Mr and Mrs G benefitting from both the SVR being lower because of the removal of the ongoing effect of the 2011 and 2012 increases, and also benefit from the SVR being lower because of the decision not to pass on base rate cuts. It's unlikely Mr and Mrs G's mortgage would ever have been in a situation where both those things happened, and therefore to require MAS5 to reduce the interest rate as if both had happened would be over-compensation.

I appreciate Mr and Mrs G feel the interest rate is still too high, and it would be fair for it to be reduced going forward. But unfortunately, we are in an economic climate where interest rates are much higher than they've been in recent years. And the rate they are now paying is not significantly out of line with reversion rates being charged by similar lenders.

Compensation for the distress and inconvenience this has caused

Mr and Mrs G have said that the £200 compensation for the distress and inconvenience this matter is far too low, and doesn't reflect the overall stress MAS5 has caused them by overcharging interest. However, Mr and Mrs G, when discussing the stress and worry this has caused, have also referred to how they've been treated whilst in arrears, and how they've been treated more recently. As I've explained above, I'm only considering the impact of the interest rate being too high in this decision.

Whilst I have upheld that the interest rate was varied unfairly, I'm not persuaded that Mr and Mrs G wouldn't still be in a significant level of arrears had the interest rate been lower. I say this as, Mr G was unable to work during the covid pandemic, and Mrs G has sadly been suffering with ill health for some time now. I can't see that had the interest rate been 1.25% lower, as I've found it should've been, that Mr and Mrs G would've been able to maintain their payments, as the level of arrears far exceeds what they've been overcharged. I also note that Mr and Mrs G had missed payments, and were in arrears before any of the interest rate changes MAS5 made that I've decided were unfair.

Furthermore, I can only consider the impact since 20 September 2016. And how they've been treated whilst in financial difficulty has been considered by two other Ombudsmen. Mr and Mrs G have been charged more than they should've. But this is put right by the redress I'm awarding. And, because of this, and the reasons set out above, I'm satisfied that the £200 is a fair amount purely to reflect the impact of increased interest they've been charged from September 2016 to November 2022. I think it's mainly the arrears and struggling to make payments that has caused Mr and Mrs G the majority of the stress in this matter. And this is why this payment is relatively modest.

Moving forward

MAS5 has told us it's already made an interim payment to Mr and Mrs G, which Mr and Mrs G accepted, on the basis that an Ombudsman would still review their complaint. I've now done that and explained why I'm not going to ask MAS5 to reduce the interest rate charged going forward.

I understand Mr and Mrs G are planning to sell their property, so hopefully the impact of the higher rate won't be for too long. But if their circumstances change, and they no longer plan to sell the property, they will need to discuss the significant level of arrears with MAS5 and see if they can come to a payment arrangement. Or they may wish to take independent financial advice about moving their mortgage elsewhere. Though I appreciate this will be very difficult given their current level of arrears.

MAS5 and our Investigator thought that 8% simple interest shouldn't be added to the redress given that the payment was being made to Mr and Mrs G directly rather than being used to reduce the arrears. I emailed MAS5 and explained why I disagree with this. MAS5 has accepted that it should pay 8% interest on the overpayments it's refunded. And I think this is fair in the circumstances.

Putting things right

In situations like this, I'd normally tell MAS5 to re-work Mr and Mrs G's mortgage account as if the interest rate charged after 20 September 2016 was 1.25% lower than it was from time to time, up until 30 November 2022.

However, as I understand it MAS5 has already made an interim payment directly to Mr and Mrs G for the full amount of the payments made had the mortgage interest rate been 1.25% lower.

MAS5 should make sure this is the case, and write to Mr and Mrs G in a clear and simple format explaining the calculation it's carried out. If anything further is payable, MAS5 should pay this to Mr and Mrs G.

I'm also satisfied that £200 is fair compensation for the reasons set out above. Again, I understand this has been paid. But if it hasn't MAS5 should make this payment to Mr and Mrs G.

Given that MAS5 made the payment directly to Mr and Mrs G, rather than reworking the mortgage account, it should also add 8% simple annual interest running from the date of each overpayment to the date of settlement and pay this to Mr and Mrs G.

Interest is at the rate of 8% a year simple. If MAS5 considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr and Mrs G how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint and direct Mortgage Agency Services Number Five Limited to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 27 June 2024.

Rob Deadman
Ombudsman