

The complaint

Ms B and Mr V complain that the interest rate Mortgage Agency Services Number Four Limited (MAS4) have charged on their mortgage is unfairly high. They complain the rate has been increased for reasons not permitted under the terms and conditions of the account.

What happened

In 2004 Ms B and Mr V took out a part interest only and part repayment mortgage over a term of 25 years. The mortgage was taken out on the standard variable rate (SVR) which was discounted by 0.75% until 1 July 2006. The offer said that on that date the mortgage would revert to the SVR.

On 1 July 2023 Ms B and Mr V complained to MAS4 about the interest rate charged on the mortgage, and that it had increased for reasons not permitted under the terms and conditions. MAS4 sent their final response letter on 9 August 2023. They said that Ms B and Mr V's complaint about the interest rate charged more than six years ago had been made out of time. They didn't uphold the rest of the complaint.

Ms B and Mr V asked our service to look into their complaint. They said MAS4's actions have led to long term anxiety and hardship, as well as deteriorating physical health.

MAS4 didn't give our service consent to look into Ms B and Mr V's complaint about the interest rate charged more than six years ago. One of our investigators looked into things and agreed that we could only consider Ms B and Mr V's complaint about the interest rate charged from 1 July 2017 onwards (the six year period leading up to the date of the complaint). But she said she would need to take account of how the rate was varied since the mortgage was taken out to determine whether the rate charged in the last six years was fair and reasonable.

The investigator considered the merits of Ms B and Mr V's complaint, and said that MAS4 should re-work the mortgage account as if the increases they made to the SVR in 2011 and 2012 had not been made. That meant reducing the rate by 1.25% from 1 July 2017 onwards (the period of time that was in our jurisdiction). She said Ms B and Mr V should have the choice of either applying the overpayments to the mortgage balance, or having them refunded. She said if Ms B and Mr V choose to have the overpayments refunded directly to them, MAS4 should add simple interest of 8% per year from the date of each overpayment to the date of refund. She said MAS4 should also pay Ms B and Mr V £150 for the stress this matter caused.

Ms B and Mr V disagreed with how our investigator had applied the time limits. They said there is a difference between knowing what they were paying, and knowing that the increases made were impermissible. They also felt the stress related health conditions they had developed as a consequence of their dealings with MAS4, two major surgeries and constant anxiety, should attract a higher level of compensation.

MAS4 said the 1.25% reduction in the interest rate should not go beyond November 2022. This is because they chose not to pass on the base rate rises during 2022 when, if the rate had been 1.25% lower than it was at the time, they would have done. As the terms and

conditions permitted them to do. The investigator reflected on what both parties had said and explained that she thought MAS4's latest offer to put things right was a fair and reasonable resolution to Ms B and Mr V's complaint.

Ms B and Mr V didn't feel the outcome was fair, so the complaint has been passed to me to issue a 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

Before turning to the merits of Ms B and Mr V's complaint, I've first thought about our jurisdiction and which parts of the complaint our service has the power to consider. Having done so, I agree with the investigator that our service only has the power to consider Ms B and Mr V's complaint about the interest rate MAS4 have charged them for the six year period leading up to their complaint in July 2023. A complaint about earlier interest charging events is out of time under the six year rule, and I also consider it to be out of time under the three year rule as well, as I'm satisfied Ms B and Mr V ought reasonably to have been aware of their cause to complain more than three years before they did complain. They were sent annual mortgage statements which contained information about the interest rate MAS4 were charging on their mortgage, and MAS4 also wrote to them each time the interest rate changed.

I note Ms B and Mr V have said that whilst they knew what they were paying, they didn't know that the reasons for the increases weren't permitted under the terms and conditions. But the rules don't require a complainant to know for certain that the business has done something wrong, just that they ought reasonably to have been aware of a cause to complain. Ms B and Mr V feel they've been charged an unfairly high interest rate since it began increasing in 2009. I'm satisfied they had enough information to have been aware of that each time MAS4 wrote to them telling them the rate was going to increase. Particularly during a period where there were no increases to the Bank of England base rate. Even if they didn't know exactly how MAS4 might have acted unfairly, that was enough to tell them that the rate might have been unfairly high.

Ms B and Mr V didn't make their complaint within the time limits, and we haven't been made aware of any exceptional circumstances that caused the delay in the complaint being made. As such, I'm satisfied we can't consider the complaint about the interest rate charged before 1 July 2017 (six years before Ms B and Mr V made their complaint).

However, as the investigator explained, the interest rate charged from 1 July 2017 onwards is, in part, the result of the cumulative rate changes that took place beforehand. And so, it is therefore appropriate for our service to consider the interest rate history of Ms B and Mr V's mortgage account dating back to when it was taken out in 2004, to determine whether the interest rate MAS4 have charged them from July 2017 onwards was fair and reasonable.

The interest rate MAS4 have charged on Ms B and Mr V's mortgage

MAS4 have made an offer to settle Ms B and Mr V's complaint by re-working their mortgage account as if the interest rate they were charged between 1 July 2017 and 30 November 2022 was 1.25% lower than what MAS4 did actually charge. They say that would put right the higher rate Ms B and Mr V paid from July 2017 onwards as a result

of the increases they made to the SVR in 2011 and 2012. They don't think the redress should go beyond November 2022 as from that point, Ms B and Mr V have been charged a rate that is 1.38% less than what it would have been had they decided to pass on the full increases to the base rate that year.

Ms B and Mr V dispute that redress is fair because they say it does not compensate them sufficiently for the past, nor does it make provision for the future. They said they're not sure how a short pause in raising the SVR in 2022 mitigates the previous unfairness. They disagree £150 is a fair amount to reflect the impact MAS4's actions have had on them.

Having considered all the information and evidence provided by both parties, I agree the offer made by MAS4 is a fair and reasonable way to put things right.

Ms B and Mr V's mortgage was not taken out with MAS4 originally. It was transferred to MAS4 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 MAS4 charged on the mortgage would not be more than 2% above the Bank of England base rate. MAS4 have referred to this as the restrictive covenant. That term did not form part of the contract between Ms B and Mr V and the lender, it was an agreement between the two businesses and did not alter the original terms and conditions that Ms B and Mr V agreed to when they took out their mortgage.

The terms and conditions of Ms B and Mr V'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.”

Ms B and Mr V's mortgage offer stated that the interest rate that applied to the mortgage would be the SVR with a discount of 0.75% until 1 July 2006, after which the SVR would apply for the remaining term of the mortgage. There was nothing in the terms that stated the SVR would be linked to any particular reference rate, and it was not a tracker rate that would track movements in the base rate.

The Bank of England base rate fell significantly during 2008 and 2009, and as a result of the restrictive covenant, the SVR MAS4 charged to their mortgage customers reduced significantly too.

The agreement MAS4 had in place to charge an SVR no higher than 2% above base rate ended in 2009, and that is when they started to increase the SVR. MAS4 have said the increases made to the SVR in 2009 were because of an increase that had occurred in the cost of funds used in their mortgage lending business. They've sent us evidence to support their arguments about that, but I'm not satisfied the evidence provided does show that MAS4's cost of funds had increased at that time.

However, that isn't the end of the matter. 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 MAS4 to reduce Ms B and Mr V'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 MAS4 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 MAS4 have sent us, as well as my 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 MAS4 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 Ms B and Mr V's mortgage that linked the SVR to the base rate, and whilst the terms allowed MAS4 to vary the SVR following changes to base rate, they didn't say they must do so.

The effect of the restrictive covenant therefore meant that the SVR MAS4 were charging their mortgage customers was lower than it would have been had the covenant not been in place. As a result, MAS4 customers, including Ms B and Mr V, received the benefit of paying a lower reversionary rate than they would have been charged by most other lenders at that time.

Whilst MAS4 may have increased the SVR when the covenant ended for reasons that weren't permitted under the terms and conditions of Ms B and Mr V's mortgage, they were 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 context to help me determine whether the rate Ms B and Mr V have been charged since July 2017 is fair and reasonable in all the circumstances.

While MAS4 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 MAS4 to essentially deduct the 2009 increases from interest charged from July 2017 onwards would provide Ms B and Mr V with a level of compensation that I think 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 MAS4 been able to vary the rate in line with the terms and conditions Ms B and Mr V agreed to without the covenant in place. To do so would result in the interest rate after July 2017 being lower than Ms B and Mr V could have expected it to be by operation of the mortgage terms and conditions alone, and would result in over-compensation.

MAS4 increased the SVR charged on Ms B and Mr V's mortgage in 2011 and 2012. The effect of both of those changes meant the rate went from 4.5% to 5.75%.

MAS4 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 MAS4 have sent us shows that there was actually an increase in MAS4's own cost of funds at that time. They've now offered to re-work Ms B and Mr V's mortgage account from July 2017 (up until November 2022) as if those increases never took place. So I won't consider this point any further, as the offer puts Ms B and Mr V 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).

There have been other increases made to the rate over time, but those were made following increases to the Bank of England base rate, which was permitted under the terms and conditions of the mortgage.

Should the redress go beyond November 2022?

MAS4 have offered to re-work Ms B and Mr V's mortgage account as though the interest rate they've been charged since July 2017 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. They've said this is because they made the decision in 2022 not to pass on the full Bank of England base rate rises to customers when they could have done. That resulted in the SVR being 1.38% lower than it would have been had they passed on the full extent of the increases. They've said if the SVR had in fact been 1.25% lower than it was before 2022, as we've said it should have been, they 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.

MAS4 have provided our service with evidence to support their arguments, including the factors the wider banking group considered when they were 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 Ms B and Mr V's mortgage – since there's no evidence of a change in the costs of funding MAS4 itself at this time, the position of the MAS4 SVR comparative to the SVR charged to 'prime' customers in the group was also a key factor. If the MAS4 SVR had been 1.25% lower than it actually was, it would have 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 MAS4 have provided, I'm satisfied that on balance, if the SVR had been 1.25% lower than it was at the start of 2022, MAS4 would have increased the SVR by more than they did during 2022, by passing on all of the base rate rises. That would have been permitted under the terms and conditions of Ms B and Mr V's mortgage.

However, whilst I'm persuaded that's what MAS4 would have done, I still have to consider whether that would have been fair and reasonable in order to determine whether the offer MAS4 have made is a fair resolution to this complaint. It's important to remember it is not the role of our service to decide what a fair interest rate should be. However, I can determine whether I think MAS4 have acted fairly when considering how to vary the rate they've charged Ms B and Mr V, and the impact that's had on them.

MAS4 have provided evidence of the risk profile of the mortgages they hold in comparison with the banking group's 'prime' mortgages. I'm satisfied that information shows that there is a greater cost to the group when a MAS4 mortgage defaults, and there is also a much higher risk of those mortgages defaulting. I don't think it's unreasonable that MAS4 considered that risk when deciding where their SVR should sit not only in relation to the 'prime' SVR charged by other lenders in the group, but also the wider mortgage market.

I'm satisfied that had the SVR been 1.25% lower than it was, and MAS4 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 Ms B and Mr V's mortgage MAS4 were entitled to increase the SVR to reflect changes in base rate. It's more likely than not, in my view, that if the SVR had been 1.25% lower because the 2011 and 2012 increases had not

happened, MAS4 would have passed on the base rate changes in 2022 to move the SVR to a level comparable with other lenders in the group. Therefore, 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 Ms B and Mr V have been charged since July 2017 in the round, and the impact of the previous unfair increases that resulted in that rate, I'm persuaded on balance that any previous unfairness was essentially 'put right' by the decisions MAS4 made when they varied the rate in the way that they did in 2022. And so, to instruct MAS4 to make an ongoing reduction to Ms B and Mr V's interest rate when that rate would be much lower than the rate they would actually have been on had MAS4 not done anything wrong, would be putting them in a better position than they ought to have been. To continue the redress beyond November 2022 means that Ms B and Mr V would benefit both from 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. I don't think it's likely Ms B and Mr V's mortgage would ever have been in a situation where both those things happened, and therefore to require MAS4 to reduce their interest rate as if both had happened would be over-compensation.

I appreciate Ms B and Mr V feel that their rate is still too high currently, 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're now paying is not significantly out of line with reversion rates being charged by other lenders of similar mortgages.

MAS4 have said they wrote to Ms B and Mr V in 2019 and 2020 inviting them to discuss an application for an internal re-mortgage with a different lender in the banking group that offers interest rate products (as MAS4 doesn't offer new products to any customers). It's not clear whether Ms B and Mr V acted on those letters or have explored re-mortgaging themselves. But I'd encourage them to speak to MAS4 if this is something they'd like to consider.

Putting things right

It's not clear whether the redress MAS4 have agreed to pay following our service's involvement has been paid. In the event it hasn't yet been paid MAS4 should do the following to put things right for Ms B and Mr V:

- Re-work Ms B and Mr V's mortgage account as if the interest rate charged after 1 July 2017 was 1.25% lower than it was from time to time, up until 30 November 2022.

I understand Ms B and Mr V would like the resulting overpayments refunded directly to them rather than applied to the mortgage account. In which case MAS4 should also add simple annual interest of 8%* running from the date of each overpayment to the date of refund.

MAS4 should also pay Ms B and Mr V £150 for the distress and inconvenience caused by the unfair increases to the interest rate. I appreciate Ms B and Mr V do not feel this goes far enough to compensate them for the mental and physical impact they've suffered as a result of MAS4's actions. But I can only make an award to reflect the direct impact of MAS4's mistakes on Ms B and Mr V. I understand Ms B and Mr V have been through difficult times, and having to pay a higher monthly mortgage payment than they should have done would have added to that. But I'm not persuaded it would be fair and reasonable to hold MAS4 accountable for Ms B and Mr V's wider health concerns.

*Interest is at the rate of 8% a year simple. If MAS4 considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms B and Mr V

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

Considering everything, for the reasons I've explained, I uphold this complaint and instruct Mortgage Agency Services Number Four Limited to put things right as set out above, if they've not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr V to accept or reject my decision before 23 July 2024.

Kathryn Billings
Ombudsman