

The complaint

Mr and Mrs W complaint that Mortgage Agency Services Number Five Limited (MAS5) has not administered their mortgage fairly. In particular they said MAS5:

- Had not offered them new interest rate products.
- Set its standard variable rate (SVR) higher than for other lenders in the same group.
- Unfairly increased the interest rate on their mortgage.

What happened

In 2007, Mr and Mrs W took out a mortgage with GMAC-RFC. The offer said they had a fixed rate of 5.99% until 31 March 2009, followed by the SVR for the remaining term of the mortgage. The SVR was 7.24% at that time.

In April 2008, MAS5 took ownership of the mortgage. In July 2009, it increased the SVR to 3.74%. There were three further increases to the SVR in October 2009, March 2011 and May 2012. All four of these increases happened at a time when the Bank of England base rate was static at 0.5% (where it had been since March 2009).

There was then no change to the MAS5 SVR until 2016, at which point further changes took place in line with changes to Bank of England base rate.

On 30 September 2022, Mr and Mrs W complained to MAS5 as set out above. MAS5 issued its final response to that complaint on 14 October 2022. Mr and Mrs W referred their complaint to us on 27 June 2023.

I issued a jurisdiction decision where I explained that we only had the power to look at events after 30 September 2022 as any complaints about events before that had been referred to us outside the time limits in our rules.

An investigator thought that MAS5's offer to the interest rate by 1.25% from 1 October to 30 November 2022 was fair. Mr and Mrs W did not accept what the investigator said.

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.

New interest rate product

When Mr and Mrs W took out the mortgage, they took out an initial fixed interest rate. The mortgage offer said they had:

"A fixed rate of 5.99% until 31 March 2009.

From 01 April 2009 the rate that will apply is the GMAC-RFC Ltd standard variable rate,

currently 7.24% for the remaining term of the mortgage.”

In July 2008, the mortgage was transferred to MAS5. Such a transfer was permitted under the terms and conditions of the mortgage and allow for GMAC's SVR to be substituted for the MAS5 SVR. I'm satisfied that MAS5 is properly Mr and Mrs W's lender and that it was entitled under the terms and conditions of the mortgage to set its own SVR.

Therefore once the fixed rate ended, Mr and Mrs W's mortgage reverted to the MAS5 SVR. That was what the mortgage offer said would happen. There was no breach of contract – and there was nothing in any of the paperwork I have seen that states that GMAC or any later transferee was required to offer Mr and Mrs W a new fixed rate once they were on the SVR. Nor was there any requirement for GMAC or MAS5 to make rates available for them to apply for.

Mr and Mrs W's mortgage has therefore operated in line with the terms and conditions and the terms of the mortgage offer. It consisted of an initial fixed rate followed by the SVR for the remaining term of the mortgage – although I am only considering the period from 1 October 2022.

There is not and never has been any other obligation for a lender to offer its borrowers new or preferential interest rates to replace a reversion rate. Just as there was no contractual term, there is no law, or rule of regulation, that compels this.

Where a lender chooses to make preferential rates available to some customers, there are obligations which apply to how it considers applications from its customers for such a rate and to the fair treatment of customers who may be eligible or ineligible for any rate their lender offers.

However, where a lender chooses not to make preferential rates available to any customer, there is nothing to say that it must do so. And I'm satisfied that – legal and regulatory obligations aside – lenders aren't required to do so as a matter of general fairness. MAS5 is a firm in its own right – though it was part of the wider Britannia and then Co-op groups, it is a separate entity to other firms in the group. MAS5's business model is the acquisition of loans originally lent by other lenders and the management of those loans through to redemption. It is not in the business of originating new loans in its own right and therefore does not offer preferential rates to attract new customers or retain existing ones. In my opinion in adopting its business model MAS5 did not act unfairly or unreasonably.

Mr and Mrs W have pointed to the availability of preferential rates from other firms in the wider Co-op group. But I don't think that is a consideration of weight in this case. MAS5's position is that The Co-operative Bank plc is a different firm, with a different business model. If Mr and Mrs W wanted to move their mortgage to The Co-operative Bank plc they would need to apply as a new customer for a The Co-operative Bank plc mortgage. While The Co-operative Bank plc has chosen to offer new preferential rates to its own existing customers, I don't think it follows that other separate firms in the group are also obliged to do so or are acting unfairly if they do not.

MAS5 and The Co-operative Bank are distinct legal entities. I can't see any basis where I could fairly require MAS5 to offer the same rates as other companies in the same group. Nor could I say that there was any requirement for MAS5 to offer Mr and Mrs W a new fixed rate.

MAS5's offer

I appreciate how disappointed Mr and Mrs W are that they are only being compensated from October 2022. I explained in my jurisdiction decision the reasons why that was – the

complaint had been referred to us outside our time limits. Therefore I don't have the power to look at events before 1 October 2022. If I were to do that, my decision would not stand.

MAS5 has accepted that it did not treat Mr and Mrs W fairly when it set the SVR on their mortgage. It has made an offer to settle the complaint that is in line with our approach to this matter. So I don't see how I could reasonably require it to do anything more.

I note that the settlement offer only goes up to 30 November 2022. MAS5 has explained that is because in November 2022 it did not pass on the full the full Bank of England base rate rises to customers when it could have 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

When considering the SVR Mr and Mrs W have been charged since 1 October 2022 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 MAS5 made when it varied the rate in the way that it did in November 2022. And so, to instruct MAS5 to make an ongoing reduction to Mr and Mrs W'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 than they ought to have been.

My final decision

My final decision is that Mortgage Agency Services Number Five Limited has made a fair offer to settle the complaint. It should:

- From 1 October to 30 November 2022, pay Mr and Mrs W the difference between the interest they paid to their mortgage and what they would have paid if the interest rate charged was 1.25% lower.
- Pay 8% simple interest on the above amount from the date each payment was made until date of settlement. 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 W 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 3 July 2024.

Ken Rose
Ombudsman