

The complaint

Mr B and Ms C complain that Mortgage Agency Services Number Five Limited (MAS5) has charged them an unfairly high rate of interest.

What happened

Mr B and Ms C took out their mortgage with a different lender in 2006. The mortgage was transferred to MAS5 in 2007. As the current lender, MAS5 is responsible for answering this complaint.

Mr B and Ms C's mortgage was on a fixed rate from 2006 to 30 September 2008, then MAS5's standard variable rate (SVR) from 1 October 2008 to present day.

On 2 August 2021, Mr B and Ms C complained to MAS5 about the interest rate it had charged on their mortgage.

MAS5 investigated the complaint and issued a final response letter in October 2021 setting out its position. It said that Mr B and Ms C's complaint about the interest rate charged on their mortgage more than six years ago had been made outside of the time limits and that the changes it had made to the interest rate were in line with Mr B and Ms C's mortgage terms and conditions.

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 the banking group. This is undertaken through a different and more proportionate affordability assessment, although is still subject to meeting the bank's current lending criteria. However, it said that Mr B and Ms C were not eligible for this scheme at the time of writing because they were not up to date with their mortgage payments.

Mr B and Ms C brought their complaint to our service in February 2022. MAS5 said that any of Mr B and Ms C's complaint relating to events and decisions about the interest rate applied to the mortgage before 2 August 2015 had been made out of time, and it didn't give our service consent to consider it. It said our service could only consider interest rate variations that took place before 2 August 2015 as background or context to the part of Mr B and Ms C's complaint that had been made in time.

I issued a decision in July 2023 setting out which parts of Mr B and Ms C's complaint about the interest rate had been brought in time. In that decision I said we could only consider the fairness of the interest rate charged for the six years leading up to the date of the complaint in August 2021. But that in order to determine if the interest charged during that period was fair, I would need to consider the whole history of the SVR.

The Investigator went on to look at the merits of the part of Mr B and Ms C's complaint that we had the power to consider. He didn't think MAS5 had acted unfairly by not offering Mr B and Ms C a new interest rate product on expiry of their fixed rate that ended in 2008.

He said there wasn't anything in the offer, or terms and conditions of Mr B and Ms C'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 Mr B and Ms C haven't been treated less favourably than others.

The Investigator looked at the history of the interest rate Mr B and Ms C had been charged on their mortgage in order to decide whether MAS5 had charged them fairly from 2 August 2015 onwards. He found that 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. That restrictive covenant came to an end in 2009.

He found that whilst MAS5 had said it had increased its SVR in 2009, 2011 and 2012 as a result of an increase in its costs of funds, the evidence provided showed that MAS5's costs of funds weren't increasing at that time. Whilst he didn't have the power to consider Mr B and Ms C's complaint about those specific increases as that was out of time, he did think those increases that MAS5 made were not made for reasons permitted under the terms and conditions, and they did impact the fairness of the SVR Mr B and Ms C were charged from 2 August 2015 onwards, as the level of the SVR charged was the cumulative history of all changes that went before.

The Investigator thought it wasn't fair and reasonable for MAS5 to charge Mr B and Ms C interest after 2 August 2015 that reflected the 1.25% increases in 2011 and 2012. But he 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 put Mr B and Ms C'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, he said removing the effect of the 2009 increases would result in over-compensation.

The Investigator didn't think any of the changes made to the SVR after 2016 were unfair. To put things right he said that MAS5 should re-work Mr B and Ms C's mortgage account as if the interest rate charged after 2 August 2015 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.

He explained this would result in changes to the arrears balance from time to time so MAS5 should also amend their credit files to reflect the revised position. Any overpayments each month should be used to reduce the arrears balance at that time, and if there was no arrears balance, carried forward. If there were any overpayments left after paying the arrears, he said MAS5 should give Mr B and Ms C 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.

He also thought about the impact the higher rate had on Mr B and Ms C, concluding that while they still would've been in financial difficulties and behind on their mortgage even if the rate had been 1.25% lower, the degree to which this was the case would've been reduced. So, he awarded £450 to recognise that the unfairly high rate contributed toward their struggles.

MAS5 responded and 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 its SVR customers. In November 2022, base rate increased by 0.75% and MAS5 took the decision to only pass on 0.38% to its 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. 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 that had passed between the interest rate increases in 2011 and 2012, and the period of time that fell within our service's jurisdiction to consider (from 2015 onwards). It said arguably, the increases that took place in 2011 and 2012 had little causative effect on the rate Mr B and Ms C were paying from 2015 onwards, particularly in light of the decisions made in 2022 as mentioned above. MAS5 made an offer to settle Mr B and Ms C's complaint on the basis that the 1.25% reduction in the rate would be made from 2 August 2015 to the end of November 2022.

Our Investigator considered what MAS5 had said, and wrote to both parties setting out how he thought MAS5 should put things right having considered all the evidence. He said he 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 B and Ms C's mortgage. 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 B and Ms C's mortgage as if the interest rate charged after 2 August 2015 was 1.25% lower than it was from time to time until 30 November 2022.

Mr B and Ms C asked that their case be referred to an ombudsman for another review, providing lengthy submissions as to why they do not consider MAS5's offer to be fair. While some points raised relate to their other complaint, I have summarised the points made in relation to this complaint below:

- Their complaint has been considered in a blanket way without considering their individual submissions. They reiterate that their mortgage was subject to a margin above the Bank of England base rate of 1.99% and that this has not been taken into account.
- No consideration has been given to the information they provided that the previous lender had based their mortgage on the US style 'floating charge' mortgage. Mr B and Ms C maintain that their mortgage is not a typical UK style mortgage and that it is similar to a tracker, but that the lender has the right to vary the interest rate under the applicable mortgage terms and conditions.
- The margin of 1.99% above base rate was to remain unless the lender varied it for one of the permitted reasons under the contract. As this service has found that no such reason applied to the variations made in 2009, 2011 and 2012, it follows that the interest rate on their mortgage should have tracked 1.99% above the Bank of England base rate for the full term of the mortgage.

- In addition, they've said the 'restrictive covenant' preventing MAS5 from increasing their rate beyond 2% above base rate cannot be relied on or said to apply to their mortgage contract. And they've sought clarification on whether their mortgage was assigned or transferred to MAS5 – arguing that depending on the answer to this, the restrictive covenant would amount to a breach of contract.
- Their mortgage deed appears to be defective.
- MAS took advantage of 'trapped customers' by increasing the interest rate, even though there had been no change in its cost of funding. Such action and others of MAS5 are a breach of FCA principles and it should be made to pay compensation as if the 2% limit had remained in place for the duration of the mortgage.
- They take issue with the term 'compensation' and the phrase 'over compensated' as they believe this was money that should not have been charged and was taken from them unfairly. Building on this, Mr B and Ms C believe they would not have been in any arrears but for the overcharge of interest so they believe that all fees, charges and interest applied to the mortgage associated with the arrears should be refunded.
- They maintain that this service should be able to go back further than six years as it should be deemed an exceptional circumstance that MAS5 did not administer the mortgage in line with the terms and conditions.

Mr B and Ms C are also unwilling to accept the interim offer made by MAS5 without a full breakdown of its redress methodology.

As the complaint could not be resolved informally it has been passed to me for 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.

The submissions made by both parties to this complaint are extensive and span across two cases. In reaching my decision I will focus on what I think is material and relevant to reach a fair and reasonable outcome on this complaint. So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

In doing so, I would like to assure Mr B and Ms C that I have taken into consideration the individual merits of their complaint and have not taken a blanket approach to deciding the outcome to this case.

I should also note that Mr B and Ms C have raised multiple complaint points about MAS5 – some of these are being dealt with under a different complaint reference. This decision will only comment on the complaint points that surround MAS5's ability to increase its SVR under the mortgage terms and conditions, whether it operated those terms and conditions fairly and whether MAS5 should have offered a new interest rate product.

Our jurisdiction to consider this complaint

I issued a decision setting out that our jurisdiction to consider Mr B and Ms C's complaint about the rate of interest charged on their mortgage was limited to considering the interest applied in the six years leading up to the date they complained.

Since that decision Mr B and Ms C have reiterated that they think our service should be able to consider the interest applied to the mortgage from its inception. While I have considered the comments they have made on this point, they do not lead me to reach a different conclusion to that set out in my jurisdiction decision in July 2023.

So, for clarity, having considered our jurisdiction to consider this complaint, I am satisfied that I have the power to look at all interest charged to the account in the six years leading up to 2 August 2021 (the date of the complaint). Any complaint about interest charged before that period is out of time under the rules that I must apply.

Should MAS5 have offered Mr B and Ms C a new interest rate product?

Mr B and Ms C's mortgage offer said that on expiry of the fixed rate product, from 1 October 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 B and Ms C would be entitled to a new fixed rate once their initial rate had ended.

Since Mr B and Ms C's mortgage has been on the SVR, MAS5 has not offered any preferential interest rate products to any of its customers. There's nothing in the law, or the regulator's rules that requires lenders to offer new products or rates. And as Mr B and Ms C's mortgage contract enables customers on its SVR to move to a new lender that does offer new rates without incurring an early repayment fee, I am not persuaded MAS5 has treated them unfairly by not offering them a new interest rate product.

I will note here that I have not considered in this decision whether MAS5 should have offered Mr B and Ms C an interest rate reduction in light of their longstanding financial difficulties. Their complaint regarding MAS5's engagement with them during their financial difficulties is being dealt with under a separate complaint reference.

The interest rate MAS5 have charged on Mr B and Ms C's mortgage

MAS5 has made an offer to settle this element of Mr B and Ms C's complaint by re-working their mortgage account as if the interest rate they were charged between 2 August 2015 and 30 November 2022 was 1.25% lower than what MAS5 did actually charge. It says that would put right the higher rate Mr B and Ms C paid from August 2015 as a result of the increases it made to the SVR in 2011 and 2012. MAS5 doesn't think the redress should go beyond November 2022 as from that point, Mr B and Ms C 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.

Mr B and Ms C dispute that redress is fair for the reasons I've set out in the background above.

The SVR increases in 2009

Mr B and Ms C'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.

It has referred to this as the restrictive covenant.

Mr B and Ms C dispute that this covenant can apply to their mortgage on several grounds as I set out above. But that term did not form part of the contract between Mr B and Ms C and the lender, it was an agreement between the two businesses and did not alter the original terms and conditions that Mr B and Ms C agreed to when they took out their mortgage. So, I am not going to comment further on Mr B and Ms C's comments discussing the difference between the mortgage being assigned versus transferred, the mortgage deed itself being defective or that the restrictive covenant was not in the terms and conditions they agreed to.

The terms and conditions of Mr B and Ms C'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 B and Ms C's mortgage offer stated that the interest rate that applied to their mortgage would be a fixed rate of 5.79% until 30 September 2008, after which the SVR would apply for the remaining term of the mortgage. Contrary to what Mr B and Ms C have said, 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 (in name, design or spirit as alluded to by Mr B and Ms C) that would track movements in the base rate with a 1.99% margin.

I note Ms C had a call with MAS5 in which the call note reflects Ms C being told her mortgage would revert to the SVR which was the base rate plus 1.99% but this does not change that her mortgage contract did not *obligate* MAS5 to track base rate or any other reference rate within a set margin. And I am not persuaded the information given during this call varied the terms of their mortgage to the extent that MAS5 would be expected to apply a different rate to the account. Nor do I agree that the original mortgage documentation supplied by Mr B and Ms C supports that the SVR on their mortgage was subject to a 1.99% margin.

I do not disagree that the general mortgage terms and conditions and other supplementary mortgage documentation from the original lender suggest that some of the mortgages it offered at the time may have been subject to a margin. But what is key to determining whether Mr B and Ms C's own mortgage was subject to such a cap is their mortgage offer.

And while they have set out that the SVR quoted in the offer was the base rate at the time plus 1.99%, the offer does not say that the SVR was limited by a cap/margin. It simply says that from 1 October 2008, their mortgage would revert to the SVR. And the definition of the SVR given in the general mortgage terms and conditions does not include reference to a 1.99% margin. So, I do not agree with Mr B and Ms C's conclusion that their mortgage contract afforded them an interest rate that would track base rate plus 1.99% for the duration of the mortgage unless legitimately varied by the lender.

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 its 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 B and Ms C's mortgage, as the increases resulted in the rate that Mr B and Ms C's mortgage was subject to increasing. 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. It has sent us evidence to support its 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, 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 MAS5 to reduce Mr B and Ms C'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 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 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 B and Ms C'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 therefore meant that the SVR MAS5 was charging its 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 have been charged by most other lenders at that time.

Whilst MAS5 may have increased the SVR when the covenant ended for reasons that weren't permitted under the terms and conditions of Mr B and Ms C'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 to determine whether the rate Mr B and Ms C have been charged since 2 August 2015 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 August 2015 onwards would provide Mr B and Ms C 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 MAS5 been able to vary the rate in line with the terms and conditions Mr B and Ms C agreed to without the covenant in place. To do so would result in the interest rate after 2 August 2015 being lower than Mr B and Ms C could have expected it to be by operation of the mortgage terms and conditions alone and would result in over-compensation.

Mr B and Ms C do not consider it appropriate to use the term 'compensation' and 'over-compensation' as they believe this was money that was unfairly taken from them during periods of significant financial and health difficulties.

I appreciate this is a particularly emotive complaint for Mr B and Ms C and that there is a great strength of feeling that MAS5 treated them unfairly. I do not intend to detract from this by using such terminology – rather its use is merely reflective of it being the most accurate way to describe what I am and am not asking MAS5 to do to put things right in this case.

The SVR increases in 2011 and 2012

MAS5 increased the SVR charged on Mr B and Ms C'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 its 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 has now offered to re-work Mr B and Ms C's mortgage account from 2 August 2015 (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 B and Ms C back in the position they would've been in had the increases not been made (for the period that is in scope of this complaint).

Should the redress go beyond November 2022?

MAS5 has offered to re-work Mr B and Ms C's mortgage account as though the interest rate they have been charged since 2 August 2015 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 has 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 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. It has said 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 have provided our service with evidence to support its 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 its market position, and to minimise customer stress. While that wasn't

the case specifically for Mr B and Ms C'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 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 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. That would have been permitted under the terms and conditions of Mr B and Ms C's mortgage.

However, whilst I'm persuaded that's what MAS5 would have done, I still have to consider whether that would have been fair and reasonable in order to determine whether the offer MAS5 has 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 MAS5 has acted fairly when considering how to vary the rate it has charged Mr B and Ms C, and the impact that's had on them.

MAS5 has provided evidence of the risk profile of the mortgages it holds 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 MAS5 mortgage defaults, and there is also a much higher risk of those mortgages defaulting. I don't think it's unreasonable that 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 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 B and Ms C's mortgage MAS5 was 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, 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. 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 Mr B and Ms C have been charged since 2 August 2015 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 2022. And so, to instruct MAS5 to make an ongoing reduction to Mr B and Ms C'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 be. To continue the redress beyond November 2022 means that Mr B and Ms C 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 Mr B and Ms C's mortgage would ever have been in a situation where both those things happened, and therefore to require MAS5 to reduce their interest rate as if both had happened would be over-compensation.

I appreciate Mr B and Ms C feel that their rate is still too high currently, and they feel it would be fair for their rate to be reduced on an ongoing basis, 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.

The impact to Mr B and Ms C

Mr B and Ms C feel MAS5's offer should be increased to reflect the fact that they would not have been in arrears at all but for the rate being unfairly increased and that MAS5's actions have directly contributed toward their health conditions.

I have considered this point carefully and I thank Mr B and Ms C for being so open with our service about the difficulties they have experienced over the years. I appreciate this complaint and their experiences with MAS5 have been difficult and they have undoubtedly experienced a lot of distress linked to their mortgage and its status across the years. However, from reviewing the account history, I am not persuaded the arrears and financial difficulties experienced by Mr B and Ms C were solely due to the unfair increases to MAS5's SVR in 2009, 2011 and 2012. Instead, it appears their account would always have been in arrears for periods at a time, just not by the same degree.

Notwithstanding my conclusion that the account would most likely have always been in arrears, it is still the case that the shortfall between what Mr B and Ms C could afford to pay toward their mortgage versus what MAS5 charged them over the years would have been smaller but for the unfair increases to the interest rate. And this would have naturally reduced some of the distress they experienced and gone some way to easing their financial worries.

In light of this and taking into account our general approach to awards for distress and inconvenience, I think MAS5 should pay Mr B and Ms C £450 in recognition of the additional distress and inconvenience it caused them during what was already a difficult time.

Recent concerns

I know Mr B and Ms C have recently been told they were not eligible to apply for a new mortgage within the group due to outstanding arrears. If they think have been treated unfairly in this regard, they should complain to the lender directly in the first instance. In a similar theme, Mr B and Ms C have raised concerns regarding the collection of their mortgage payments and whether MAS5 has authority to collect payments on behalf of third parties. Should they wish to complain about this issue Mr B and Ms C would need to raise this with MAS5 in the first instance and it would not be appropriate for me to comment on it in this decision.

Putting things right

For the reasons I've explained, I'm satisfied MAS5 should do the following to put things right for Mr B and Ms C:

- Re-work Mr B and Ms C's mortgage account as if the interest rate charged after 2 August 2015 was 1.25% lower than it was from time to time, up until 30 November 2022.
- MAS5 should recalculate the mortgage using the payments Mr B and Ms C actually made, but with revised monthly payments using the lower interest rate. This will result in changes to the arrears balance from time to time, and so MAS5 should also amend their credit files to reflect the revised position. Any overpayments each month should be used to reduce the arrears balance at that time, and if there was no arrears balance carried forward.
- MAS5 should also ensure that any arrears fees or charges applied to the mortgage from 2 August 2015 are refunded (plus simple annual interest of 8% from the date

applied to the date of settlement) if, having reworked the account, they would not have been levied on the account at the time.

- If there are any overpayments left after repaying the arrears, Mr B and Ms C should be given the choice of either having those repayments refunded to them, with simple annual interest of 8% running from the date of each payment to the date of refund; or having the overpayments treated as periodic overpayments to reduce the mortgage balance.
- MAS5 should also pay Mr B and Ms C £450 in compensation to recognise the increased distress and inconvenience they experienced because of their interest rate being higher than it should have been between 2 August 2015 and 30 November 2022.

I appreciate Mr B and Ms C believe that MAS5 should be made to pay compensation as if the rate had remained at 2% above base rate for the full duration of the mortgage to reflect that it breached FCA principles and took advantage of “trapped” consumers. However, our service is not here to punish businesses or to make punitive awards. Instead, it is to consider the merits of the individual case and when awarding redress, to do so in such a way that aims to put the consumer in the position they would have been in had the error or unfairness not taken place – as so far as is possible.

Having considered this complaint in depth, I am satisfied the compensation I have recommended above does this and for the reasons I’ve already set out, I do not think it would be fair or reasonable to direct MAS5 to do anything further than what I have directed.

My final decision

For the reasons set out above, I uphold Mr B and Ms C’s complaint in part and direct Mortgage Agency Services Number Five Limited to compensate Mr B and Ms C as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B and Ms C to accept or reject my decision before 11 July 2024.

Lucy Wilson
Ombudsman