

The complaint

Mrs G complains that Mortgage Agency Services Number Five Limited (MAS5):

- Unfairly increased the interest rate on her mortgage.
- Charged a different standard variable rate (SVR) than other companies in the same group.
- Would not offer her a new interest rate product.
- Did not treat her fairly when she experienced financial difficulty

What happened

In 2007, Mrs G took out a mortgage with GMAC-RFC. It had a fixed rate of 5.6% until 30 September 2009. The mortgage offer said the SVR would apply for the remaining term of the mortgage. The SVR at that time was 7.49%.

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.

Mrs G complains that MAS5 has unfairly increased the SVR as the increases were not in line with the terms and conditions or changes in the Bank of England base rate. She also said that other customers in the same group as MAS5 were charged a different SVR and that MAS5 should justify the difference in rates.

Mrs G said because of stricter mortgage lending rules, she was unable to obtain a mortgage with another lender. She said that MAS5 took advantage of the fact she was trapped by increasing the SVR and by not offering access to new interest rate products.

At times Mrs G has experienced financial difficulty. She considers the increased SVR has contributed to that and MAS5 has not offered adequate support to her. She said that led to her financial position deteriorating further. She had to take out credit and borrow money from friends and family to be able to pay the mortgage, particularly as MAS5 had obtained a possession order in 2011.

I issued a jurisdiction decision that we could only consider events from 19 November 2017.

MAS5 offered to re-work Mrs G's mortgage by reducing the interest rate by 1.25% from 19 November 2017 until 30 August 2022, then by 0.75% from 1 September 2022 until 31 October 2022, and then by 0.25% from 1 to 30 November 2022. The investigator thought

that MAS5's offer to settle the complaint was fair. He did not think it would be fair to reduce the SVR from 1 December 2022.

In respect of the complaint about how Mrs G was treated when she was in financial difficulty, the investigator did not think it should be upheld. He thought the offer of £250 for any distress and inconvenience caused to Mrs G was also fair.

Mrs G did not accept what the investigator said. She made a number of points, including:

- She'd rejected MAS5's offer to re-work her mortgage.
- It was unacceptable to offer £250 compensation. That did not take into account that she'd been a "mortgage prisoner" for years and stuck on the high SVR.
- She could not understand why we couldn't look at the complaint from 2009. It was unfair that we'd not considered the SVR from 2009.
- The 1.25% reduction should be applied to the current SVR. The current offer does not return her to the correct position.
- She should receive a 2.76% reduction in line with other cases she was aware of – reflecting that the SVR should have remained at 2.99% from 2009 until 2016.
- She should receive 8% interest on the refund.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I explained the position regarding our jurisdiction in my decision dated 21 May 2024. The time limits that apply under our rules depend very much on the individual circumstances of each complaint. So, even if we have been able to look back further on other individual complaints regarding the interest rates applied by MAS5, it does not follow that we will be able to on every complaint we see.

I see no reason to change the decision I reached on our jurisdiction. Therefore I can only consider events from 19 November 2017.

New interest rate product

When Mrs G took out the mortgage, she took out an initial fixed interest rate. The mortgage offer said:

"A fixed rate of 5.6% until September 2009.

From 01 October 2009 the rate that will apply is the GMAC-RFC Ltd standard variable rate, currently 7.49% 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 Mrs G'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, Mrs G'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 Mrs G a new fixed rate once she was on the SVR. Nor was there any requirement for GMAC or MAS5 to make rates available for her to apply for.

Mrs G's mortgage has therefore operated in line with the terms and conditions and the terms of the mortgage offer in respect of. It consisted of an initial fixed rate followed by the SVR for the remaining term of the mortgage.

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.

Mrs G has 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 Mrs G wanted to move her mortgage to The Co-operative Bank plc she 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 Mrs G a new fixed rate

The SVR increases in 2009

Mrs G's mortgage was not taken out with MAS5 originally. In 2008 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. That is referred to as the "restrictive covenant". That term did not form part of the contract between Mrs G and the lender, it was an agreement between the two businesses and did not alter the original terms and conditions that Mrs G agreed to when she took out her mortgage.

The terms and conditions of 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.”

Mrs G's mortgage offer stated that the interest rate that applied to her mortgage would be a fixed rate of 5.6% until 30 September 2009, 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 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 MAS5 charged to their mortgage customers reduced significantly too.

Mrs G's mortgage was not actually on the SVR until 1 October 2009 as she had a fixed rate in place, and so the rate she was paying didn't reduce as it did for borrowers whose mortgages were on the SVR. So I appreciate why she feels she did not receive the benefit of the restrictive covenant. But when she took her mortgage out, she agreed that the interest rate she would pay would be fixed until 30 September 2009, and so MAS5 were charging her that rate in line with the terms.

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 Mrs G's mortgage, as the increases resulted in the rate that Mrs G's mortgage reverted to in October 2009, and the rate she's been charged on her mortgage since.

MAS5 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 Mrs G's interest rate as if those increases in 2009 had not taken place.

While 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 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 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 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.

While MAS5 may have increased the SVR when the covenant ended for reasons that weren't permitted under the terms and conditions of Mrs G's mortgage, it was restoring the rate to what it would have been had the covenant not been in place. Mrs G may not have benefitted from the existence of the covenant, as a result of the higher fixed rate she was on, I'm not persuaded that's a result of anything MAS5 did wrong.

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 Mrs G has been charged since 19 November 2017 is fair and reasonable.

MAS5 might 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 November 2017 onwards would provide Mrs G 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 Mrs G agreed to without the covenant in place.

To do so would result in the interest rate after 19 November 2017 being lower than 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 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 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 Mrs G's mortgage from 19 November 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 Mrs G back in the position she 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 Mrs G's mortgage account as though the interest rate she's been charged since 19 November 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. 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 they 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 has provided our service with evidence to support its arguments, including the factors the wider banking group considered when it was 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 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 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 have 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 they did during 2022, by passing on all of the base rate rises. That would have been permitted under the terms and conditions of Mrs G's mortgage.

However, although 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 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 MAS5 has acted fairly when considering how to vary the rate it's charged Mrs G, and the impact that's had on her.

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 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 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 Mrs G'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 Mrs G has been charged since 19 November 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 MAS5 made when it varied the rate in the way it did in 2022. And so, to instruct MAS5 to make an ongoing reduction to Mrs G's interest rate when that rate would be much lower than the rate she would actually have been on had MAS5 not done anything wrong, would be putting her in a better position than she ought to have been. To continue the redress beyond November 2022 means that Mrs G 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 Mrs G's mortgage would ever have been in a situation where both those things happened, and therefore to require MAS5 to reduce his interest rate as if both had happened would be over-compensation.

I appreciate Mrs G feels that her rate is still too high currently, and she feels it would be fair for her 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 she's now paying is not significantly out of line with reversion rates being charged by other lenders of similar mortgages.

Financial difficulty

I was sorry to hear what Mrs G and her family have been through. Mrs G doesn't consider MAS5 treated her fairly when she experienced financial difficulty. That includes in particular (but not only) events between 2010 and 2013. As I've explained, I can't look at anything that happened before 19 November 2017. So I can only consider whether MAS5 treated her fairly from that date.

Where a mortgage is in arrears, MAS5 is required to treat borrowers fairly. That will usually involve finding out details of a borrower's income, expenditure and circumstances and considering whether there were any concessions it could offer to help get the mortgage back on track.

The difficulty in this case is that Mrs G's mortgage was already interest only. So that meant some of the concessions that were available, such as a term extension or switching to interest only, would not really help her. But I can see that MAS5 considered Mrs G's income, expenditure and circumstances. It gave Mrs G time and has arranged payment plans. In the individual circumstances of this complaint, I consider that MAS5 has treated Mrs G fairly when she experienced financial difficulty.

I know Mrs G feels strongly that it was the level of the SVR that has caused her financial difficulty. But there were clearly significant other factors not related to the level of SVR that caused her financial difficulty. I am not persuaded that the level of the SVR was the sole or primary cause of any difficulty Mrs G experienced since 19 November 2017. But I consider £250 is a fair amount to reflect any distress caused solely by the level of the SVR being higher than it should have been.

Putting things right

I clarified with MAS5 the offer that it has made to Mrs G. Its offer is to re-work Mrs G's mortgage as if the lower interest rate was applied. So MAS5 will recalculate Mrs G's mortgage as if the interest rate applied to the mortgage was lower by the following amounts:

| | |
|---|---------------|
| From 19 November 2017 to 30 August 2022 | - 1.25% lower |
| From 1 September to 31 October 2022 | - 0.75% lower |
| From 1 to 30 November 2022 | - 0.25% lower |

That would mean the payments Mrs G has actually made would reduce her arrears more quickly. Once the arrears have been cleared, MAS5 will refund the difference in interest to Mrs G – and that will include interest at 8% simple per year from the date each payment was made until date of settlement. MAS5 has also confirmed that it will amend Mrs G's credit file in line with the above to reflect that the arrears would be cleared more quickly.

I am satisfied that the offer made by MAS5 is a fair and reasonable way to settle this complaint and reflect that it did not always set the SVR fairly.

My final decision

My final decision is that Mortgage Agency Services Number Five Limited should:

- Recalculate the mortgage using the payments Mrs G actually made, but with revised monthly payments using the lower interest rates as set out above – from 19 November

2017 until 30 November 2022. Any resulting overpayments should be used to reduce the arrears balance at that time.

- Once the arrears balance has been cleared pay any overpayments directly to Mrs G. Pay interest at 8% simple per year from the date any such overpayment was made until date of settlement*.
- Amend Mrs G's credit file in line with the reconstructed mortgage as set out above.
- Pay Mrs G £250 for any distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 4 July 2024.

* If MAS5 considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs G how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Ken Rose
Ombudsman