

The complaint

Mrs E has complained about the way Mortgage Agency Services Number Five Limited (“MAS5”) has administered her mortgage account. She said the standard variable rate (“SVR”) has been increased unfairly and those changes weren’t in line with the terms and conditions of her account. She said she’d like the SVR changes between 2009 and 2018 examined.

Mrs E says it has caused her family to fall apart as they can’t afford to live together, and she’s had issues with her health and the threat of repossession, with missed payments also impacting her credit file. She says she believes she’s owed over £100,000, and she’s also unhappy that MAS5 is refusing to provide her with a fixed, or reduced, interest rate.

Mrs E has been represented in bringing this complaint by a family member. Any reference to Mrs E in this decision should be taken to mean that family member acting on her behalf where appropriate.

What happened

Mrs E took out this mortgage in July 2007 with lender G. The mortgage offer, which had been issued in June 2007, showed Mrs E was borrowing £490,000 (plus fees) over a 25-year term on an interest only basis. The interest rate was noted to be fixed at 5.25% until 30 June 2009, after which it would move to lender G’s SVR which was 7.49% at the time of the offer.

The mortgage was transferred to MAS5 in September 2007.

In February 2011 Mrs E complained about the increase in the SVR. MAS5 responded to the complaint saying the SVR isn’t linked to the Bank of England base rate and it is only changed for very good reasons. It said, in this case, the cost of funding the mortgage had increased.

Mrs E raised a further complaint about the interest rate in October 2014. MAS5 responded to that complaint in November 2014 saying the interest rate being charged, the SVR of 5.75%, was correct. It said it was administering the mortgage correctly and in accordance with the mortgage agreement.

Since Mrs E's mortgage reverted to the SVR in 2009, the interest rate MAS5 charged was as follows:

Date	SVR
1 July 2009	3.74%
1 October 2009	4.50%
1 March 2011	5.25%
1 May 2012	5.75%

There was then no change in the SVR until 2016. From 2016 to date, MAS5 has changed the SVR at the same time as, and by the same amount as, changes to the Bank of England base rate – with the exception of a period during 2022 when it did not pass on all the increases in base rate to its customers on the SVR.

On 7 December 2023 Mrs E emailed MAS5 to complain about the interest rate she'd been charged. She said that MAS5 had unfairly increased her interest rate – the SVR – from 2.99% to 6%. She also complained that she wasn't able to get a new preferential interest rate product with MAS5.

In January 2024 MAS5 said it had upheld the part of the complaint about the interest rate charged and said it would calculate how much redress was due for the period from 7 December 2017 to 30 November 2022. In respect of a new interest rate, it said it can't offer new rates but Mrs E could apply for a new Britannia mortgage as that was part of the same banking group. It gave a number Mrs E should call if she wanted to discuss that.

In February 2024 MAS5 sent a further letter setting out its calculations and giving Mrs E the choice of two options; a payment of around £4,420 to be paid to the mortgage account and then around £32,260 to be paid to Mrs E directly, or for around £36,790 to be paid to the mortgage account. I understand Mrs E accepted the second option in March 2024 after it was confirmed the acceptance of that offer didn't affect her right to pursue the complaint.

Mrs E referred the complaint to the Financial Ombudsman Service saying she'd calculated her loss to be in the region of £100,000. She said she'd been complaining about the interest rate since 2009, and she was unable to carry on paying the mortgage at its current rate.

Our Investigator said that Mrs E had complained too late about the interest she had been charged before 7 December 2017, although he said he would take account of earlier interest rate changes as part of the overall circumstances of the complaint. He also said we couldn't consider a complaint about the support offered to Mrs E over the years, or that her application for an internal remortgage was declined, because she needed to complain to MAS5 about those points first before we could get involved.

He then considered the complaint about the interest rate since 7 December 2017 and said that MAS5's offer to put things right was fair and reasonable. He didn't award any additional payment for any distress and inconvenience caused. He said over the six-year period he could consider Mrs E had actually overpaid – that is, she'd paid more overall than MAS5 had asked her to – so although she had been charged more than she should there was no evidence those higher payments had caused her hardship.

Mrs E didn't agree with our Investigator's assessment, so the case was passed to me to decide. In May 2024 I issued a decision about our jurisdiction to consider this complaint in which I said we could consider slightly more than MAS5 and our Investigator said, but we still only have the power to consider this complaint in respect of the interest rate charged since 31 January 2017.

Following that MAS5 recalculated its offer and said it would pay a further £8,024.05 to Mrs E's mortgage account to cover the period from 31 January 2017 to 7 December 2017.

What I've decided – and why

I issued a provisional decision earlier this month, the findings of which said:

"MAS5 is what is known as a "closed book" lender in that it's not taking on new business, but it's still regulated by the Financial Conduct Authority ("FCA") and has to follow its rules. But there's nothing in the FCA's rules that says a lender has to offer new interest rates to its customers once their old ones expire. The rules say that a lender has to treat its customers fairly taking account of their best interests; it has to communicate with them in a clear, fair and not misleading way; it has to notify them of changes to their monthly payments; and it mustn't take advantage of customers who can't move their mortgages elsewhere by treating them differently to other customers with similar characteristics.

In this case, MAS5 has notified Mrs E of changes to her payments from time to time. It isn't treating her differently to any other of its customers – all customers must stay on the reversionary rate (in this case that was the SVR) that was set out in their mortgage offer once their products expire, just like Mrs E. So I don't think MAS5 is in breach of any of the regulator's rules in not offering her a new rate.

I don't think MAS5 is acting in breach of the terms of the mortgage agreement either. Mrs E's mortgage offer sets out that she would pay interest at a fixed rate until 30 June 2009, and thereafter at the SVR. Nothing in the mortgage offer or the mortgage terms says that Mrs E would be entitled to another fixed interest rate after that one expires. I'm aware, of course, from my knowledge of the mortgage market that it's common for borrowers to take a fixed or tracker rate product – and then, at or shortly before its expiry, take another rate rather than revert to the SVR. Sometimes that's with their existing lender, sometimes it's with another lender. But as I say, there's nothing in Mrs E's mortgage agreement that says she's entitled to a new rate – and that's also true of most other lenders' mortgage agreements too.

I've set out that there's nothing in the regulator's rules, and nothing in the mortgage contract, that requires MAS5 to offer new interest rates. Nor is it under any other legal obligation to do so.

That's not the end of the matter though – my role is to decide what's fair and reasonable in all the circumstances. I do that by taking into account the law, regulator's rules and guidance, and good industry practice – but ultimately I'm not constrained by them if I think fairness requires me to do something else.

So the question I have to answer is whether, taking into account the rules and the mortgage terms, it's fair and reasonable in all the circumstances that MAS5 has refused Mrs E a new interest rate that's lower than her reversionary rate.

I've thought about this carefully. I've taken into account everything I've set out above. It's unfortunate that, through no fault of her own, Mrs E has ended up with a closed book

lender that doesn't offer new rates. But MAS5 is her lender, and legitimately so. It's decided not to offer new interest rates to any customers, including Mrs E.

Under current law and regulations, that's a decision MAS5 is entitled to take. I'm mindful that if MAS5 were to offer new lower rates to some customers but not others, that could mean some customers were being treated less favourably than others with similar characteristics – which in turn could potentially cause unfairness.

MAS5 isn't treating Mrs E any differently to how it treats its other customers. Its business model is based on not offering new products – and that's a decision about its business it's entitled to take. There's nothing in the contract, the law or the regulator's rules that requires MAS5 to offer new products. MAS5 is treating Mrs E the same as it treats all its other customers.

That leads me to consider whether Mrs E's reversionary rate during this period was fair.

MAS5 has offered to rework Mrs E's mortgage account by reducing the rate on the mortgage by:

- 1.25% from 31 January 2017 to 31 August 2022;
- 0.75% from 1 September 2022 to 31 October 2022;
- 0.25% from 1 November 2022 to 30 November 2022.

It says that would put right the higher rate Mrs E paid from 31 January 2017 as a result of the increases it made to the SVR in 2011 and 2012.

It doesn't think the redress should go beyond November 2022 as from that point, Mrs E has been charged a rate that is less than what it would have been had it decided to pass on the full increases to the base rate that year.

The 2009 changes

Mrs E'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. This has been referred to as the restrictive covenant. That term did not form part of the contract between Mrs E and the lender, it was an agreement between the two businesses and did not alter the original terms and conditions that Mrs E agreed to when she took out her mortgage.

The terms and conditions of Mrs E'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 E's mortgage offer stated that the interest rate that applied to her mortgage would be a fixed rate of 5.25% until 30 June 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 its mortgage customers reduced significantly too.

Mrs E's mortgage was not actually on the SVR until 1 July 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. But when she took her mortgage out, she agreed that the interest rate she would pay would be fixed until 30 June 2009, and so MAS5 was charging her that rate (5.25% fixed until 30 June 2009) in line with her mortgage 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 E's mortgage, as the increases resulted in the rate that Mrs E's mortgage reverted to in July 2009, and the rate she's been charged on her mortgage since, being at the level it is.

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's 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 me to order MAS5 to reduce Mrs E'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 keeping in mind 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 E'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 they 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 Mrs E's mortgage, it was restoring the rate to what it would have been had the covenant not been in place. And whilst Mrs E 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 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 E has been charged since 31 January 2017 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 January 2017 onwards would provide Mrs E 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 E agreed to without the covenant in place. To do so would result in the interest rate after 31 January 2017 being lower than Mrs E could have expected it to be by operation of the mortgage terms and conditions alone, and would result in over-compensation.

The 2011 and 2012 changes

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

MAS5 has offered to re-work Mrs E's mortgage account from 31 January 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 E 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).

What happened in November 2022

MAS5 has offered to re-work Mrs E's mortgage account as though the interest rate she's been charged since 31 January 2017 was 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 has 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 their market position, and to minimise customer stress. 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 Mrs E'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 Mrs E, 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 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 Mrs E'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 E has been charged since 31 January 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 that it did in 2022. And so, to instruct MAS5 to make an ongoing reduction to Mrs E'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 E 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 E's mortgage would ever have been in a situation where both those things happened, and therefore to require MAS5 to reduce her interest rate as if both had happened would be over-compensation.

I appreciate Mrs E 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.

Mrs E has said that she's not seen the detailed calculation from MAS5 for the redress so it can be verified that it has been calculated correctly. As a service we don't get involved in auditing the actual calculations and I won't be awarding a monetary amount, even though MAS5 has already given those numbers. Instead my award is a methodology on how to calculate the redress.

Of course, it's open to Mrs E to instruct a suitably qualified professional to check the figures for her. But that would have to be at her expense. Mrs E should already hold most of the information she requires so she can ask that person to check the figures for her, with that being taken from the letters MAS5 sent to her setting out the redress, and from her annual mortgage statements. If there is anything else required for those calculations to be checked Mrs E can ask MAS5 for that directly."

I set out how I thought things should be put right and asked both sides for any final submissions they wanted to make. MAS5 confirmed it had nothing further to add, and Miss E made some final submissions by phone and email.

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

Having done so and having considered everything Miss E said in response to my provisional decision, I see no reason to depart from my provisional conclusions. As I explained in my provisional decision, if Mrs E doesn't already hold enough information to verify the calculations then she needs to ask MAS5 for that directly as I am simply awarding a methodology, rather than an actual redress figure.

Putting things right

For the reasons I've explained, I'm satisfied the methodology of the offer MAS5 has made to put things right for Mrs E is fair. For clarity, that methodology is that MAS5 should re-work Mrs E's mortgage account by reducing the rate on the mortgage by:

- 1.25% from 31 January 2017 to 31 August 2022;
- 0.75% from 1 September 2022 to 31 October 2022;
- 0.25% from 1 November 2022 to 30 November 2022.

The gradual change in the rate is a result of the timings of the changes MAS5 said it would have made had the rate been 1.25% lower before 2022. This reflects the fact that base rate increased by 0.5% in August and September 2022 – neither increase was passed on but would have been had the rate been lower.

As I've explained, I'm satisfied that this is what MAS5 would have done, had it not been charging Mrs E an unfairly high rate prior to 2022. And so I'm satisfied the methodology of the offer it has made puts Mrs E back in the position she would have been in, had MAS5 applied a fair rate of interest from 31 January 2017 onwards.

I understand Mrs E chose for the payment to be made to her mortgage, and that MAS5 made the initial reduction in March 2024. I understand that MAS5 hasn't yet paid the redress for the additional time I said we could consider, that is from 31 January 2017 until 7 December 2017. If Mrs E chooses to accept my decision she will need to let MAS5 know whether she also wants that paid to the mortgage account, or whether she wants it paid – in part – to her.

My final decision

I uphold this complaint, but only insofar as agreeing the methodology Mortgage Agency Services Number Five Limited used in calculating the redress is fair and reasonable. To settle the complaint I order Mortgage Agency Services Number Five Limited to pay the additional redress that is due for the period identified in my decision about our jurisdiction, that is from 31 January 2017 to 7 December 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 16 July 2024.

Julia Meadows
Ombudsman