

The complaint

Mr and Mrs D complain about legal costs, arrears fees, and insurance premiums that were added to their mortgage balance by Mortgage Agency Services Number Five Limited (MAS5).

They also complain that the interest rate charged was punitive and too high.

What happened

Mr and Mrs D had a mortgage account with MAS5 that they'd originally taken out with a different lender.

Over the life of the mortgage Mr and Mrs D experienced periods of financial difficulty, which affected their ability to make their full monthly payments at times. As a result, arrears built on the account, and fees and charges were added to the mortgage balance. Legal costs have also been added as a result of MAS5 pursuing legal action to recover the arrears.

In April 2018, Mr and Mrs D complained to MAS5 about the outstanding balance of their mortgage. They were unhappy with all the costs, fees and charges that had been added to the balance over the life of the mortgage. They also complained about the interest rate they'd paid – as they said it was unfairly high. They weren't happy the mortgage had been transferred to MAS5 without their consultation.

MAS5 didn't uphold the complaint. It said the legal costs, fees and charges had been added to the account in line with the terms and conditions of the mortgage. It wrote to Mr and Mrs D when they were added, and they were also included in their statements. It also said the interest rate had been charged in line with the terms of the agreement, and the complaint about the transfer of the mortgage had been made out of time.

Mr and Mrs D referred their complaint to our service. MAS5 didn't give our service consent to consider all of Mr and Mrs D's concerns. I issued a decision which said our service only had the power to consider Mr and Mrs D's complaint about the legal costs, fees, charges and interest rate that had been applied to the mortgage since April 2012. Mr and Mrs D's complaint about events prior to that date had been made out of time.

Mr and Mrs D redeemed the mortgage in October 2021.

Following our service's involvement in Mr and Mrs D's complaint, MAS5 made an offer to put things right. It offered to do the following:

- Refund the difference in interest charged on the mortgage from April 2012 until redemption as if the interest rate was 1.25% lower than it was from time to time.
- Refund any legal fees, field agent fees, and insurance premiums that were added to the account from April 2012 until redemption.
- Add 8% simple interest to the above amounts calculated from the date the mortgage was redeemed to the date of settlement (minus 20% deducted for tax purposes).
- Pay Mr and Mrs D £500 for the distress and inconvenience caused.

The above offer gave a total refund of £23,748.07.

MAS5 made clear that whilst it agreed the interest should be refunded, it was refunding the legal fees, field agent fees, and insurance premiums as a gesture of goodwill.

Mr and Mrs D accepted the basis of MAS5's offer in principal, but weren't happy that the 8% simple interest was only applied from the date the mortgage was redeemed. They said they'd been deprived of those funds since 2012 when they were paying too much interest on the mortgage. So they wanted the 8% simple interest to be calculated from the date of each overpayment to the date of settlement.

Our Investigator asked MAS5 to calculate what the settlement figure would be if the 8% simple interest was applied each year an overpayment was made, rather than re-working the account as if Mr and Mrs D had overpaid each month.

MAS5 produced a new settlement figure of £23,345.80. It said the figure was lower as the effect of compound interest saving on the mortgage interest is higher than the compensatory interest over the period. Mr and Mrs D's mortgage was in arrears at times during the relevant period, so the compensatory interest would not be paid when arrears were present as the 'overpayments' resulting from the lower interest rate would first need to clear the arrears.

Mr and Mrs D weren't happy with the updated offer and so the complaint has been passed to me to issue a decision.

What I've decided – and why

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

The only matter left in dispute here is the way in which MAS5's offer to put things right for Mr and Mrs D has been calculated. Therefore, that is what I will focus on in this decision.

Although part of MAS5's offer was made based on a gesture of goodwill, it hasn't told our service it's retracted that offer. And so, I've issued this decision on the basis that offer is still available to Mr and Mrs D.

MAS5 has accepted that since April 2012, it was charging Mr and Mrs D an interest rate that was 1.25% higher than it should have been. And it's made an offer to put that right. Mr and Mrs D accept that in principle, but they feel they should receive 8% simple interest from the date each mortgage payment was made, to the date of settlement. They say that's when they were deprived of the funds, and so follows our service's usual approach. And so, it wouldn't be fair not to apply that here.

Mr and Mrs D are right in that where we're satisfied a business's error has resulted in the consumer being deprived of funds they would otherwise have had, we'll usually ask the business to pay 8% simple interest on the funds they've been deprived of, calculated from the date the funds should have been available to the consumer, to the date of settlement.

That's what MAS5 has offered to do in its revised offer of £23,345.80. I appreciate Mr and Mrs D are disappointed that the offer wasn't higher than the original offer which only calculated the 8% simple interest from the date the mortgage was redeemed, to the date of settlement. But that's because the original offer was calculated in a way that the payments Mr and Mrs D had made to the mortgage from time to time were treated as overpayments. So the net effect of that meant that less compound interest was charged on the mortgage month on month as the balance reduced more quickly than it actually did in reality.

If MAS5 don't treat the payments Mr and Mrs D made as overpayments, and instead refund the overpayments with 8% interest paid on each of those payments, more interest is then applied to the overall outstanding balance each month. It's also relevant here that Mr and Mrs D's mortgage wasn't always up to date, and there were some arrears on the account during the relevant period. Where the mortgage payments were actually behind, we would expect MAS5 to reflect that in the redress payment, because any refunds would first need to be used to bring the account up to date before we'd expect a compensatory award to be paid for the deprivation of funds. As those funds were owed to MAS5 at the time – Mr and Mrs D weren't unfairly deprived of them for those periods.

It seems as though Mr and Mrs D want MAS5 to offer an amount that would put their mortgage account into the position it would have been as if both of the above events happened. The overpayments reduced the balance at the relevant times, and compensatory interest is added from the date of each overpayment. Both of those things would never have happened at the same time, and that would provide Mr and Mrs D with considerable overcompensation.

I appreciate Mr and Mrs D have waited a significant period of time for their complaint to be resolved, and I'm grateful for their patience in this regard. Whilst I understand they're disappointed with the offer MAS5 has now made to put things right, I think the two options it's provided Mr and Mrs D are fair and reasonable, and in line with our service's usual approach to compensation.

Putting things right

To put things right MAS5 should give Mr and Mrs D the option of accepting one of the two offers it's made to settle this complaint.

- £23,748.07 which applies the 'overpayments' to the mortgage balance and applies 8% simple interest calculated from the date of redemption to the date of settlement.
- £23,345.80 which refunds the 'overpayments' made from time to time and applies 8% simple interest calculated from the date of each overpayment to the date of settlement.

Although I would expect the exact figures to change given the 8% simple interest amount will need to be re-calculated up to the date settlement actually takes place (should Mr and Mrs D accept this decision).

I understand MAS5 has already provided a tax certificate to Mr and Mrs D for the 20% it has deducted from the settlement amount for tax purposes. It will need to do the same again once the final settlement figure is agreed and paid.

My final decision

I uphold this complaint and instruct Mortgage Agency Services Number Five Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 19 September 2024.

Kathryn Billings
Ombudsman