

## The complaint

Mr D is unhappy with how he's been treated by Mortgage Agency Services Number Five Limited (MAS5) in relation to his mortgage.

## What happened

In 2006, Mr D re-mortgaged his property on interest only terms for £135,000 over 25 years. The re-mortgage was originally taken with a different lender. The mortgage interest rate was initially 5.94% fixed to the end of 2008, after which it would revert to the lender's standard variable rate (SVR).

I've seen a letter from January 2007 in which the original lender wrote to Mr D to inform him the mortgage was being transferred to MAS5.

Since Mr D's mortgage reverted to the SVR in 2009, the interest rate MAS5 charged up to the point Mr D made his complaint, was as follows:

Date	SVR
02/01/2009	4.99%
13/01/2009	3.99%
24/02/2009	3.49%
17/03/2009	2.99%
01/07/2009	3.74%
01/10/2009	4.50%
01/03/2011	5.25%
01/05/2012	5.75%
01/09/2016	5.50%
01/12/2017	5.75%
01/09/2018	6.00%
01/04/2020	5.50%
01/05/2020	5.35%
01/02/2022	5.50%
01/03/2022	5.75%
01/05/2022	6.00%
01/06/2022	6.25%
01/08/2022	6.50%
01/12/2022	6.88%
01/02/2023	7.38%
01/03/2023	7.88%
01/05/2023	8.13%
01/07/2023	8.38%

Over the years, Mr D has experienced periods of financial difficulty, missing some payments and being in and out of arrears.

In July 2023, Mr D complained to MAS5 about a number of things to do with the mortgage. In summary:

- The mortgage was mis-sold.
- MAS5 increased the mortgage interest rate unfairly and the interest charged has been too high.
- Information may have deliberately been withheld about the mortgage being transferred to an inactive lender.
- The transfer of the mortgage to another lender in 2015 may not have been lawful.
- It wasn't clear that at times he was speaking with employees of companies other than MAS5.
- MAS5 didn't treat him fairly when in financial difficulty.

MAS5 didn't uphold the complaint and Mr D referred his concerns to the Financial Ombudsman Service.

An Investigator here issued an assessment covering both the extent to which the Financial Ombudsman Service could look into things and their thoughts on the merits of the issues we could look into.

In terms of what we could look at, the Investigator said we could only consider the interest charged and how Mr D was treated in financial difficulties going back six years from the date he made the complaint. But in terms of the interest rate charged, he said he could consider the interest rate changes before that point as relevant context for the period we could consider in terms of anything MAS5 needed to do to put things right.

In summary, the Investigator said the following about the things he said we could look into:

- The increases to the SVR in 2011 and 2012 (totalling 1.25%) didn't correspond with a change in the Bank of England Base Rate or changes to the cost of funding of MAS5's mortgage business. Because of this, MAS5 should re-work Mr D's account as though the interest charged from 29 July 2017 was 1.25 % lower than the rate that was actually charged. And that MAS5 should also reduce the rate by 1.25% moving forwards.
- The acquisition of MAS5's parent company by another financial services company in 2009 hadn't had any impact on the mortgage or the management of it. So Mr D hadn't suffered any detriment as a result of this happening.
- Mr D may from time to time have spoken with staff members technically employed by another company in the group or staff provided by a third party company. However, this isn't unusual and hadn't resulted in any detriment to Mr D.
- Regarding the financial difficulties Mr D experienced, a separate assessment on this would be provided at a later stage, when the impact of the lower interest applied to the account was established.

Mr D disagreed with a number of points in relation to the scope of what the Investigator had

said the Financial Ombudsman Service could and couldn't look at. I've since issued a decision setting out our concluded position on this.

In relation to what the Investigator had said about the merits of the complaint, Mr D said the following (in summary):

- The All Party Parliamentary Group (APPG) has said that the interest refund should be 2.76% covering all of the relevant rate rises between 2009 and 2012, which he agreed with.
- Information he'd seen suggests his mortgage was sold to another financial services company in 2015, not 2009. And that there are question marks about whether the Land Registry was properly informed. This should be explored further.
- MAS5 not making it clear that some of the contact he was having was with members of staff from other companies in the group was deliberate to preclude him from accessing alternative mortgage products from other companies within the group.

MAS5 agreed with most of the interest refund element but didn't think it needed to reduce the rate beyond November 2022. This was on the basis that it didn't pass on all of the Base Rate increases that happened between December 2021 and January 2023, resulting in the difference between Base Rate and the MAS5 SVR reducing from 5.25% to 3.88%.

As the matter was unresolved, the case was passed to me for review. I asked the Investigator to set out their view on the financial difficulties aspect of the complaint. In summary, they said:

- Based on the MAS5 comparative interest calculation, they could infer that it was likely the account wouldn't have been in arrears during the relevant period if a fair rate of interest had been charged.
- This would have substantially changed Mr D's experience during that time in that it would have reduced or removed the need for the contact and correspondence relating to the mortgage arrears.
- It's also possible that Mr D would have had more options in terms of re-mortgaging elsewhere, although they noted that since the mortgage had been out of arrears, Mr D hadn't (as far as they were aware), taken action to seek lending elsewhere, including from other companies in the same group.
- Given all of this, MAS5 should (in addition to the comparative interest refund) pay Mr D £1,000 to reflect the unnecessary distress and inconvenience caused.

MAS5 accepted this recommendation. Mr D said the impact of MAS5 charging the interest that it did in terms of putting him into arrears had led to him being unable to borrow money or explore re-mortgage possibilities elsewhere. He said the £1,000 didn't even scratch the surface of the financial losses he'd suffered.

I issued a Provisional Decision (PD) in August 2024. In it, I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done this, I'm currently minded to say that MAS5 must put things in right in terms of the additional 1.25% interest paid by Mr D between 29 July 2017 and November 2022. And pay Mr D £1,000 in compensation for the unnecessary distress and inconvenience caused to him.*

*I don't currently think that the interest difference should be any higher than the 1.25% or that Mr D has shown that the additional interest charged has directly led to any other specific financial loss. I also don't currently think that the compensation figure should be higher. But I'll consider any further evidence and/or arguments made before reaching my final decision.*

*I've separately set out the scope of what I can and can't consider in terms of Mr D's complaint. I'll now share my current thinking on the things I can consider.*

#### *Interest charged on the mortgage*

*MAS5 has made an offer to settle Mr D's complaint by re-working his mortgage account as if the interest rate he was charged between 29 July 2017 and 30 November 2022 was 1.25% lower than what MAS5 did actually charge. It says that would put right the higher rate Mr D paid from July 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, Mr D has 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 D disputes that redress is fair as he wants the increases MAS5 made to the SVR in 2009 to be taken into account in the rate reduction, therefore asking for MAS5 to make a 2.76% reduction in the rate he's paid.*

#### *The SVR increases in 2009*

*Mr D'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.*

*They've referred to this as the restrictive covenant. That term did not form part of the contract between Mr D and the lender, it was an agreement between the two businesses and did not alter the original terms and conditions that Mr D agreed to when he took out his mortgage.*

*The terms and conditions of Mr D'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 D's mortgage offer stated that the interest rate that applied to Mr D's mortgage would be a fixed rate of 5.94% until 31 December 2008, 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.

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. 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 D's interest rate as if those increases in 2009 had not taken place. I say this because 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 its mortgage business did not reduce by as much as the base rate did, and its 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 Mr D'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 their 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 D's mortgage, it was 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 D has been charged since 29 July 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 July 2017 onwards would provide Mr D 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 D agreed to without the covenant in place. To do so would result in the interest rate after 29 July 2017 being lower than Mr D 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 Mr D'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 D's mortgage account from 29 July 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 Mr D back in the position he 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 Mr D's mortgage account as though the interest rate he's been charged since 29 July 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 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 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 its market position, and to minimise customer stress.*

*While that wasn't the case specifically for Mr D'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 they did during 2022, by passing on all of the base rate rises. That would have been permitted under the terms and conditions of Mr D'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 D, and the impact that's had on him.*

*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 D'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 D has been charged since 29 July 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 Mr D's interest rate when that rate would be much lower than the rate he would actually have been on had MAS5 not done anything wrong, would be putting him in a better position than he ought to have been.*

*To continue the redress beyond November 2022 means that Mr D 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 D'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.*

#### *The impact of the additional interest on Mr D's circumstances*

*Without seeing a detailed reconstruction of the mortgage account, I can't be sure of the exact impact the 1.25% reduction to the interest rate will have. But bearing in mind that between July 2017 and mid 2019 the account was generally two months or less in arrears (and at times out of arrears), it seems quite likely that the interest charged being 1.25% lower from 29 July 2017 would've reduced the arrears, if not removed them altogether from July 2017 onwards.*

*As such, the additional interest has led to at least some fees and charges in relation to the arrears and legal action accruing that wouldn't have done had the interest rate charged been 1.25% lower. There would also have been significantly less need for contact between MAS5 and Mr D in relation to the status of the account and it's highly likely that MAS5 wouldn't have initiated legal proceedings due to the extent of the actual arrears on the account. I think this means that the additional interest charged has led Mr D to experience quite a lot of unnecessary distress and inconvenience.*

*In addition, had Mr D's account been out of the arrears either more often or all of the time from July 2017, he may have had more options in terms of re-mortgaging the property. He says he has tried to borrow money elsewhere and been declined due to being behind on the mortgage.*

*I appreciate what Mr D has said about this, but there's no guarantee that any attempt by him to re-mortgage elsewhere or borrow money elsewhere would've been successful. And if successful, we don't know what terms such borrowing would've been on or the ongoing impact of that on his overall financial situation. For that reason, I can't say that the additional interest charged, and the effect on the status of his MAS5 mortgage account, has led to a specific other financial loss. But I can factor into my thinking about compensation that Mr D's options have likely been reduced in some way.*

#### *MAS5's treatment of Mr D in financial difficulties*

*Mr D has said that MAS5 deliberately intimidated him during times of financial hardship, was hostile and unhelpful to him, encouraged him to default on his mortgage and made communication extremely difficult.*

*MAS5 denies this was the case. It says it has never deliberately taken steps to intimidate Mr D or encouraged him to default on the mortgage.*

*I asked MAS5 to provide me with the contact notes/history relating to Mr D's mortgage account and it has provided this to me. I've reviewed this between 29 July 2017 and when Mr D raised his complaint.*

*Having done this, whilst acknowledging that such notes can only give part of the picture, they suggest to me that in general MAS5 has looked to support Mr D to get back on track with the mortgage and to respond sympathetically when he's found it difficult making repayments due to receiving less income than expected and him facing unexpected costs (including travel costs) linked to the ill health of family members.*

*There's nothing in the notes suggesting that MAS5 staff have been deliberately intimidating or encouraged him to default on the mortgage. In terms of the forbearance MAS5 gave, the notes indicate that it agreed multiple arrangements with him.*

*The notes also indicate that MAS5 was frequently asking Mr D to provide updated information about his income and expenditure in order that it could consider how best it could support him over time and what arrangements may be best in the circumstances.*

*The notes suggest there were times where Mr D indicated he would be providing such information, but then didn't.*

*I've thought specifically about the reasonableness of MAS5's decision to proceed with a possession hearing in early 2020. A lender seeking possession of a property is meant to be a last resort. In April 2019, the mortgage was just over one month in arrears. By the time MAS5 first wrote to Mr D about taking legal action – in September 2019 – the account was nearly four months in arrears. By January 2020, despite Mr D having made a lump sum payment of £2,000 in October 2019, the account arrears had increased. And when Mr D provided updated details about his income and expenditure, it showed a deficit.*

*However, it was agreed that Mr D should seek advice from a debt management company and consider how he might be able to reduce his outgoings, including in relation to his unsecured debts. After doing this he provided updated income and expenditure details showing a small surplus. Mr D had also made MAS5 aware that he anticipated receiving a*



*substantial inheritance within a matter of weeks, that he said would enable him to address the arrears and more.*

*I think this issue is quite finely balanced, because the account was in significant arrears, Mr D was clearly struggling to meet the contractual monthly repayments and there were times when Mr D had been made aware that he needed to provide updated income and expenditure information, but hadn't done so. It's also unclear how much certainty MAS5 would've had about the amount and timing of the inheritance Mr D had mentioned.*

*However, given what Mr D had said about receiving an inheritance, that the latest income and expenditure showed a surplus and thinking about the broader circumstances, I think on balance it wasn't reasonable for MAS5 to press ahead with the possession hearing when it did in March 2020.*

*I've thought about the impact of this on Mr D. Shortly after the possession hearing the impacts of Covid were felt, with lenders required to show additional forbearance to borrowers experiencing difficulties meeting their repayments. This included rules first preventing and then limiting lenders from gaining possession. Given that Mr D cleared his arrears in May 2021, I think it unlikely that MAS5 would've sought possession before this point.*

*I think this means that MAS5's decision to proceed with the possession hearing in March 2020 caused Mr D to experience unnecessary worry and upset specifically in relation to this. I've taken this into account when thinking about what award for distress and inconvenience is appropriate.*

*Concerns raised about not being made aware the mortgage was being transferred to an inactive lender*

*There was no requirement for MAS5 to make Mr D aware when it took over the mortgage in 2009, that it was a closed book lender.*

*Mr D's mortgage offer said that on expiry of the fixed rate product, from 31 December 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 D would be entitled to a new fixed rate once his initial rate had ended.*

*Since Mr D'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. Since Mr D's mortgage has been on the SVR, he wouldn't have incurred any early repayment charges if he'd decided to re-mortgage elsewhere to a lender that does offer rates.*

*Concerns raised about a transfer of the mortgage in 2015*

*Mr D has said he's seen information suggesting that his mortgage was sold in 2015 and that the Land Registry may not have been properly informed. He says this should be looked into further.*

*However, Mr D hasn't provided the information he says he's seen. My understanding is that the mortgage was transferred to MAS5 in 2007 and that MAS5's parent company merged with another financial services group in 2009.*

*Even if I'm wrong about this, it's not clear how Mr D has been negatively affected. He's needed to continue to repay the mortgage in line with the terms and conditions and Mr D isn't suggesting that such a transfer has altered the terms and conditions of his mortgage or*

*explained why he wouldn't be liable to continue to make repayment under the contract.*

*Concerns raised about not being made aware that some conversations were with staff working for other companies*

*Mr D's point here appears to be that by it not being made clear to him that some of the contact he's had about the mortgage has been with staff from companies other than MAS5, he's not been aware that he might have been able to obtain a different mortgage product with companies within the same financial service group.*

*MAS5 says that since November 2019 it has been able to offer some customers the opportunity to apply for an internal re-mortgage to another lender within the same group. But that Mr D wasn't eligible for this until recently when his account had been out of arrears for twelve months.*

*There's nothing inherently wrong with what's happened here. Financial services (and other) companies will sometimes pool resources or outsource certain functions in a way that means a customer will sometimes be talking to somebody not technically employed by the service provider the customer is in contact with.*

*There's no evidence that where this has been the case, this has been some kind of deliberate ploy on the part of MAS5. I'm also not persuaded it's resulted in any detriment to Mr D.*

*Putting things right*

*For the reasons I've explained, I'm currently of the view that MAS5 should do the following to put things right for Mr D:*

- Re-work Mr D's mortgage account as if the interest rate charged after 29 July 2017 was 1.25% lower than it was from time to time, up until 30 November 2022. This should include the removal of arrears and legal fees and charges that wouldn't have applied had a fair rate been applied. It should then write to Mr D to explain what it's done and what the revised mortgage balance and monthly payments will be.*
- If Mr D would prefer the resulting overpayments from the above calculation to be paid to him directly and not taken off his mortgage, MAS5 should refund the amount to Mr D. It should also add 8% simple annual interest\* running from the date of each overpayment to the date of settlement.*
- If the above account re-work results in periods of time when Mr D's mortgage would have been up to date when there were previous arrears, MAS5 should amend the way it's reported Mr D's mortgage account to credit reference agencies for the relevant periods.*
- Pay Mr D £1,250 in compensation to reflect:*
  - the unnecessary distress and inconvenience caused to him in terms of the contact with MAS5 whilst in arrears that either wouldn't have been necessary or would've been much reduced; and*
  - to reflect that Mr D's options to re-mortgage or obtain other borrowing are likely to have been reduced.*

*I believe this amount would be fair in all the circumstances and in line with our approach to compensation awards. Such an award is relevant where the impact of a business's mistake has caused substantial distress, upset and worry. And where there may have been serious disruption to daily life over a sustained period, with the impact felt over a long period of time.*

### My provisional decision

*My provisional decision is to uphold Mr D's complaint and to direct Mortgage Agency Services Number Five Limited to put things right as set out above."*

I asked for any further comments or evidence to be provided by 9 September 2024. MAS5 responded to say it accepted my provisional findings. Mr D disagreed. In summary, he said:

- He is deeply dissatisfied with the stance the Financial Ombudsman Service has taken on the matter. My provisional decision is the latest in a long line of deeply flawed decisions the Financial Ombudsman Service has made with regards to MAS5 over the past 15 years or so.
- The compensatory interest rate of 1.25% does not reflect the recommendations of the APPG for mortgage prisoners, nor does it come close to compensating for the full overcharging of interest. My decision does little other than to protect MAS5 from the repercussions of its fraudulent activity. It is a conspiratorial act of protectionism on behalf of MAS5, with little regard for the victim. The Financial Ombudsman Service has utterly failed to fulfil its stated purpose.
- The application of the six year rule shows an unreasonable expectation of industry knowledge for the average customer. Also, given what he was going through, his circumstances were exceptional. My refusal to accept this shows a disturbing lack of humanity and empathy for his situation.
- My finding that had he not been in arrears (due to the application of an excessive interest rate) there is no guarantee that he would've sought or found alternative borrowing is clearly self-contradictory and utterly defies logic.
- MAS5 has quite deliberately refused outright to offer him alternative products, which has been ignored.
- My recommendation for a compensation payment of £1,250 is utterly laughable. This amount covers less than a third of the cost of fighting the repossession proceedings, let alone his wider losses. There is clearly no interest in the suffering, distress and financial hardship caused to him and his family.
- My finding that there's nothing in the notes indicating intimidation by MAS5 and that he didn't provide financial details is an outright lie. He did provide expenditure details on a number of occasions and there were numerous phone calls in the hope that MAS5 would offer more favourable terms. If the notes don't show this then the truth is being deliberately withheld. It is very clear that since 2010 MAS5 has constantly viewed him as a potential repossession.
- It's astonishing that the transfer to an inactive lender isn't seen as problematic. This is what has led to him being trapped and may have been a calculated and cynical move to cause him difficulties later to eventually end up in repossession.
- It is equally astonishing that I don't see the inherent problem with how the mortgage was transferred without his knowledge and the failure to tell him that he was not always dealing with MAS5 staff. They constitute a concerted effort on MAS5's part to obfuscate the truth of the situation and that I do not see the premeditated intent to drive him into financial ruin and repossession.

Mr D also said that it was his understanding that the 1.25% compensatory figure had been mandated for all customers of MAS5, not just those that have launched a complaint with the Financial Ombudsman Service. He asked if I was able to confirm that he would receive this part of the compensation regardless of whether or not he accepted my final decision.

Mr D also said that during the process, MAS5 has indicated they would wish to see the compensation balanced against the mortgage account which should then be transferred into a repayment mortgage. Mr D said he trusted that MAS5 would not be allowed to stipulate any such thing.

I asked Mr D to provide evidence of the costs he'd incurred defending the repossession proceedings. Mr D provided a document indicating the costs he'd incurred through engaging a solicitor to represent him defending the repossession action. I shared this with MAS5 and told it that, in principle, I would be minded to include this as part of the award within the Final Decision.

MAS5 accepted this, but said that it would want to see the details on the solicitor's headed paper. Mr D then provided copies of correspondence from the solicitor referring to the legal costs incurred and confirming that payment had been taken.

### **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.

Having done so, I've reached broadly the same outcome as that communicated in my PD (which forms part of this Final Decision). The difference is that in order to put things right, MAS5 must also reimburse Mr D for the legal fees he incurred in defending the repossession proceedings that wouldn't have occurred but for its errors.

Before I explain why, I first want to set out my role as an Ombudsman. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint.

And for that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having considered all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint.

It is clear from Mr D's response to my PD that he is deeply dissatisfied with my provisional findings. He suggests that my decision is about protecting MAS5 and that I'm not interested in the suffering, distress and financial hardship caused to him and his family.

I am sorry that Mr D is so dissatisfied with my findings. I can only seek to assure him that I have approached my review of his case from a standpoint of independence and impartiality.

### **Jurisdiction**

Mr D disagrees with my decision that sets out the scope of what I can and cannot consider, in terms of the time limits that apply. As part of this, Mr D has said that he considers my finding that exceptional circumstances don't apply as showing a disturbing lack of humanity.

It is regrettable that Mr D feels this way. I did make it clear in my decision that I was sorry to hear of the challenges he had faced and that I accepted the things he has mentioned will undoubtedly have been very difficult to deal with.

I've noted all of the points Mr D has raised, but my decision remains as set out within the decision that I issued setting out what I can and cannot consider.

#### Interest charged on the mortgage

I acknowledge what Mr D has said about the 1.25% difference in interest i.e. that it doesn't reflect the recommendations of the APPG for mortgage prisoners and that it doesn't, in his view, come close to compensating for the full overcharging of interest. He hasn't elaborated on why he thinks this is the case.

I went into detail in my PD explaining why I consider that the 1.25% figures is fair in all the circumstances. Nothing Mr D has said in response to my PD changes this.

#### The impact of the additional interest on Mr D's circumstances

Mr D has made it clear he doesn't think the £1,250 compensation figure is anywhere near enough to reflect the losses he's suffered. He says I've contradicted myself in my provisional findings in relation to what his arrears position would've been and his ability to re-mortgage elsewhere. But I don't agree. That Mr D would have been less in arrears and possibly out of arrears altogether doesn't guarantee that any attempt by him to re-mortgage elsewhere or borrow money elsewhere would've been successful.

Lending decisions are not made exclusively based on a prospective borrower's credit record – there are numerous other factors, including broader affordability considerations, at play. Even if hypothetically speaking Mr D had successfully applied for some other borrowing – secured or otherwise - we still don't know on what terms such borrowing would've been on or the ongoing impact of that on his overall financial situation. For that reason, I still find that I can't say the additional interest charged, and the effect on the status of his MAS5 mortgage account, has led to a specific other financial loss. But I can still factor into my thinking about compensation that Mr D's options have likely been reduced in some way.

#### MAS5's treatment of Mr D in financial difficulties

Mr D maintains that he was subject to intimidation by MAS5's agents. He says he did provide it with financial details and that he had asked it to change the mortgage to more favourable terms but this was declined.

Starting with the last point, MAS5 is a closed book lender and by definition does not offer alternate rates of interest. I've considered what Mr D has said about what he believes was MAS5's intention to move towards repossession for its own benefit and it continuously intimidating him.

I acknowledged in my PD that contact notes can only give part of the picture. I've considered what Mr D has said, but I still find that the notes suggest to me that in general MAS5 has looked to support Mr D to get back on track with the mortgage and to respond sympathetically when he's found it difficult making repayments due to receiving less income than expected and him facing unexpected costs (including travel costs) linked to the ill health of family members.

Whilst I acknowledge that Mr D feels strongly that MAS5 did act in an intimidatory manner, I still find there's nothing in the notes suggesting this was the case.

More broadly, when considering the forbearance MAS5 gave Mr D, the notes indicate that it agreed multiple arrangements with him and, other than its decision to proceed with repossession proceedings when it did (which I will come onto in a moment), I find that it

provided reasonable forbearance given what it understood of Mr D's circumstances.

Finally on this topic, the notes support what Mr D has said – in that he did provide MAS5 with financial information at times. What I said in my PD was that the notes suggest there *were times* where Mr D indicated he would be providing such information, but then didn't. I still find this to be the case.

In terms of the reasonableness of MAS5's decision to proceed with repossession proceedings in early 2020, neither party has provided any further comments or evidence in relation to this. As such, I see no reason to depart from my provisional findings on this point.

However, Mr D has provided evidence that he incurred solicitor costs defending the repossession proceedings. I find this is a cost that directly came about because of MAS5's decision to go ahead with the proceedings. I find that these are costs Mr D likely wouldn't have incurred but for this (and but for the excess interest charged – without which it's unlikely repossession proceedings would ever have been a consideration).

And I still find that MAS5's decision to proceed with the possession hearing in March 2020 caused Mr D to experience unnecessary worry and upset specifically in relation to this. I've taken this into account when thinking about what award for distress and inconvenience is appropriate.

#### Concerns raised about the mortgage being transferred to an inactive lender and not being made aware of this

I note Mr D finds it astonishing that I do not consider the transfer of his mortgage to an inactive lender to be problematic. And that he thinks it may have been a calculated and cynical move to initiate the difficulties he later experienced, ultimately to result in the repossession of his home.

However, Mr D hasn't provided any evidence to support this notion. And I still don't find that MAS5 has acted unfairly in relation to this point, because I still find that there was nothing in the offer document or the terms and conditions of the mortgage that stated Mr D would be entitled to a new fixed rate once his initial rate had ended.

And it is still the case that since Mr D's mortgage has been on the SVR, MAS5 has not offered any preferential interest rate products to any of its customers. I still find there's nothing in the law, or the regulator's rules that requires lenders to offer new products or rates.

#### Concerns raised about not being made aware that some conversations were with staff working for other companies

I note that Mr D finds it equally astonishing that I don't see an inherent problem with him not being told he wasn't dealing with MAS5 staff at the times when the people he was talking to worked for a different company. Mr D believes this is part of a concerted effort on MAS5's part to obfuscate the truth of the situation surrounding his mortgage.

Again, Mr D hasn't provided any evidence to support what he considers to be MAS5's deliberate efforts to cause him difficulty and loss.

Nothing Mr D has said has altered my thinking on this point. I still find there to be no evidence that on the occasions Mr D was technically speaking to someone from another company that this was some kind of deliberate ploy on the part of MAS5. I also remain unpersuaded that it's resulted in any detriment to Mr D.

## Other matters

Mr D said that he understood the 1.25% compensatory figure has been mandated for all customers of MAS5, not just those who have launched a complaint with the Financial Ombudsman Service. He asked if I was able to confirm that he would receive this part of the compensation regardless of whether or not he accepts the final decision.

I am unable to confirm this. Mr D will need to decide whether or not to accept my decision.

Mr D also said that MAS5 had told him it would want to see the compensation put against the mortgage balance and the mortgage then transferred to a repayment mortgage. He said he assumed MAS5 would not be allowed to stipulate this.

I'm unaware of the context of these discussions. But I can say that I wouldn't expect MAS5 to switch the mortgage to repayment without discussion and agreement with Mr D.

## **Putting things right**

For the reasons I've explained, MAS5 should do the following to put things right for Mr D:

- Re-work Mr D's mortgage account as if the interest rate charged after 29 July 2017 was 1.25% lower than it was from time to time, up until 30 November 2022. This should include the removal of arrears and legal fees and charges that wouldn't have applied had a fair rate been applied. It should then write to Mr D to explain what it's done and what the revised mortgage balance and monthly payments will be.
- If Mr D would prefer the resulting overpayments from the above calculation to be paid to him directly and not taken off his mortgage, MAS5 should refund the amount to Mr D. It should also add 8% simple annual interest\* running from the date of each overpayment to the date of settlement.
- If the above account re-work results in periods of time when Mr D's mortgage would have been up to date when there were previous arrears, MAS5 should amend the way it's reported Mr D's mortgage account to credit reference agencies for the relevant periods.
- Pay Mr D £1,716, being the costs incurred by him in engaging solicitors to defend the repossession case. The information Mr D has provided indicates this was paid on or around 1 November 2021, so MAS5 should add 8% simple annual interest from that date to the date of settlement.

\*Interest is at the rate of 8% a year simple. If MAS5 considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr D how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

- Pay Mr D £1,250 in compensation to reflect:
  - the unnecessary distress and inconvenience caused to him in terms of the contact with MAS5 whilst in arrears that either wouldn't have been necessary or would've been much reduced; and
  - to reflect that Mr D's options to re-mortgage or obtain other borrowing are likely to have been reduced.

I appreciate Mr D considers this to be inadequate. However, I still consider this amount is fair in all the circumstances and in line with our approach to compensation awards. Such an award is relevant where the impact of a business's mistake has caused substantial distress, upset and worry. And where there may have been serious disruption to daily life over a

sustained period, with the impact felt over a long period of time. I still consider this reflects the impact on Mr D.

### **My final decision**

My final decision is that I uphold Mr D's complaint about Mortgage Agency Services Number Five Limited and I direct it to do what I've set out above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 November 2024.

Ben Brewer  
**Ombudsman**