

The complaint

Miss D has complained about her mortgage she holds with Mortgage Agency Services Number Five Limited ("MAS5").

She is represented in bringing this complaint by a family member, Mr D. Any reference to Miss D in this decision should be taken to mean that family member acting on her behalf where appropriate.

What happened

Miss D took out this mortgage in February 2007 with lender G, with the application being made through a mortgage broker. The mortgage illustration, issued in November 2006, showed Miss D was borrowing £101,650 (plus £2,200 fees) over a 13-year term on an interest only basis. The interest rate was noted to be fixed at 5.59% until 31 December 2008, after which it would move to lender G's SVR which was 6.74% at the time of the illustration.

The mortgage was transferred to MAS5 in 2007.

In 2008 and 2011 Miss D expressed her dissatisfaction with increases in the SVR, but MAS5 didn't treat those as complaints so no final response letters were sent.

MAS5 wrote to Miss D on 15 June 2015 to remind her that her mortgage was held on an interest only basis and so she would need a way to repay the outstanding balance at the end of the term. It said the mortgage term was due to end in February 2020 and she owed around £103,000. It asked that she get in contact to let MAS5 know what plans she had to repay the loan, and said that if Miss D didn't have any arrangements in place then it could arrange for her to speak to a mortgage adviser to discuss options that may be available to her.

MAS5 wrote to Miss D again on 13 July 2015 and on 10 August 2015 to say that it hadn't heard back from her in response to its letters asking for details of her plans to repay her interest only mortgage at the end of the term. It asked that she either call it or fill in a form it had enclosed to provide the information.

A further letter was sent on 20 February 2019 to warn Miss D that her mortgage was due to reach the end of its term in February 2020 and that she had an outstanding balance of around £103,000.

A complaint was raised in a call in March 2019 about the interest rate being charged, and as MAS5 considered the complaint to have been resolved over the phone it issued a summary resolution letter on 15 March 2019. That said if Miss D had changed her mind about how the complaint had been resolved she should let MAS5 know, and it said that alternatively Miss D could refer the complaint to our service, and that she had six months from the date of the letter to do so.

A further complaint was raised in April 2019, which MAS5 responded to on 6 June 2019. In its final response letter MAS5 summarised that complaint as:

‘My understanding of your complaint is as follows:

- You are unhappy with your interest rate which is currently 6%.
- You are dissatisfied with the service you have received from Mortgage Agency Services Number 5 (MAS5).’

It said, in its final response letter, that it had already addressed the complaint regarding the interest rate and it then went into further detail about Miss D’s dissatisfaction with the service she’d received with these points including:

- Its records showed it had made Miss D aware of any change to the interest rate of her mortgage.
- It hadn’t found any evidence of call backs not being made and said if there was any further information about that, including specific instances, it would be happy to look into things further.
- It apologised for any delays that may have been experienced when contacting MAS5 over the last two years but said it couldn’t see that had been mentioned previously. It said without details of any specific instances when delays had been experienced it was unable to investigate that part of the complaint.
- In respect of letters being received weeks later than dated it said it had no control over the timescale for delivery once the letter had left its office.
- The mortgage term ends in February 2020, and in February and March 2019 it had detailed some options that may be available if Miss D didn’t have a repayment plan including providing some links to some websites, and information of some debt advice firms, that may be able to give further guidance and help as it was unable to provide advice.
- It didn’t currently use email as a way of communicating with customers, and contact could instead be made by phone, fax or in writing.

It didn’t uphold the complaint and the letter closed with an explanation that Miss D had six months from the date of the letter to refer the complaint to us. If she didn’t do so, and there were no exceptional circumstances to explain the delay, MAS5 said that it wouldn’t consent to us looking at it.

Mr D raised a complaint in August 2019, which was answered in a final response letter that was issued to him on 11 October 2019. In its final response letter MAS5 summarised that complaint as:

‘My understanding of your complaint is as follows:

- You feel [Miss D’s] mortgage was mis-sold to her.
- You are unhappy that a letter was issued to an incorrect address, risking your data and delaying your authority.
- You are also dissatisfied at how the mortgage has been managed.’

It said, in summary:

- The mortgage was taken out with lender G and transferred to MAS5 in June 2007. It wasn’t responsible for selling, or giving any advice about, the mortgage to Miss D, and it gave the details of the mortgage broker that had arranged the mortgage.
- The letter of 6 August 2019 had a typographical error in the address. It said the letter didn’t contain any data about the mortgage, but clearly caused a delay at a stressful time for Miss D and it apologised for that. It confirmed Mr D now had authority to discuss the account with MAS5 on behalf of Miss D. For the error it said it had enclosed a cheque for £100 compensation.
- It was unable to offer a new interest rate product and had encouraged Miss D to seek independent financial advice on a number of occasions. It said it was looking at ways to help customers in similar situations, and expected to be in a position to contact such customers towards the end of 2019. MAS5 said it may be able to consider a repayment mortgage for Miss D, subject to an affordability assessment and her meeting its lending criteria and it would be in touch about that in due course, and if Miss D needed any short term help with her monthly payments she should call MAS5 to discuss that.

Again, the letter closed with an explanation that Mr D (on behalf of Miss D) had six months from the date of the letter to refer the complaint to us. If they didn’t do so, and there were no exceptional circumstances to explain the delay, MAS5 said that it wouldn’t consent to us looking at it.

Mr D raised a further complaint, which was answered in a final response letter that was issued to him on 6 December 2019. In its final response letter MAS5 summarised that complaint as:

‘My understanding of your complaint is as follows:

- You are unhappy at the decisions taken by Mortgage Agency Services (MAS), the upshot of which is that we cannot extend or renew [Miss D’s] mortgage.
- You feel MAS has misled you that a solution was able to be provided for [Miss D], as well as providing poor and disjointed service over a number of months.’

It said, in summary:

- It was unable to offer any long term solution for Miss D and it had extended the mortgage term until May 2020 to give Mr D and Miss D time to seek an alternative.
- It appreciated the process had been frustrating, but it had explored all the options even though it couldn't always give answers quickly. Although there were preferential interest rates available through its parent company, it wasn't appropriate to leave Miss D's mortgage on an interest only basis, and the payments weren't affordable if it was converted to repayment even on those lower rates.
- Whilst MAS5 had been hopeful of being able to offer Miss D the chance to continue her mortgage, no commitment was given and unfortunately there was no sustainable way for the mortgage to continue.
- It hadn't found any specific instances of poor service and the mortgage had been administered in line with the contractual terms.

The letter closed with an explanation that Mr D (on behalf of Miss D) had six months from the date of the letter to refer the complaint to us. If they didn't do so, and there were no exceptional circumstances to explain the delay, MAS5 said that it wouldn't consent to us looking at it.

The complaint was referred to the Financial Ombudsman Service on 30 April 2020. In the meantime, the original mortgage term had ended in February 2020, albeit MAS5 (as set out above) had offered to give Miss D until May 2020 to repay the outstanding balance.

MAS5 agreed to us looking at the issues that were resolved by the summary resolution letter of 15 March 2019, but it didn't give its consent to us considering the issues covered in the final response letters of 6 June 2019 and 11 October 2019.

Our Investigator said that Miss D hadn't referred the final response letters dated 6 June 2019 and 11 October 2019 to us in time so we couldn't consider those complaints. He said we also couldn't consider the complaints that were made to MAS5 after the complaint was referred to us, or any points that hadn't yet been through MAS5's complaint process. He said MAS5 had given us its consent to consider the complaint dealt with in March 2019 (which related to the interest rate being charged), and he said the letter of 6 December 2019 had been referred in time, so we could consider those points.

In relation to the complaint points that our Investigator found fell within our jurisdiction, he said that MAS5's offer to put things right was fair and reasonable and that it didn't need to do any more.

Mr D didn't agree with our Investigator's assessment, so the case was passed to me to decide. In October 2024 I issued a decision about our jurisdiction in which I said:

'For the reasons I've explained we only have the power to consider the following complaint points:

- The interest rate charged on this mortgage, including how it has varied, which has led to Miss D being overcharged.
- MAS5 didn't offer Miss D a new interest rate product.
- Miss D has been treated unfairly in respect of the mortgage term end.

I'll now review the complaint on that basis and will issue a separate decision setting out my findings on that in due course.'

I'm now issuing this decision as the final stage of our process.

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.

Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

The interest rate

Miss D took this mortgage out with another lender, lender G, on interest only terms with an initial fixed rate until 31 December 2008. At the end of the initial rate, the mortgage offer said the loan would revert to lender G's SVR.

In the meantime lender G had sold a group of mortgages, including this one, to the then Britannia Building Society group – and specifically to a firm within the group, MAS5. From the time of the transfer, MAS5 took over from lender G as the regulated firm which owned Miss D's mortgage and acted as her mortgage lender.

This means that since the mortgage was then owned by MAS5, it was the MAS5 SVR rather than lender G's SVR that Miss D reverted to after her fixed rate ended on 31 December 2008. This meant Miss D's mortgage reverted to 4.99% from January 2009.

Mr D has said '[Miss D's] initial 2 year fixed rate contract ended in 2009, of which MAS5 are illegally trying to hold her accountable until February 2020 when the overall contract ended. This is over 4 years ago. As there is 100% NO CONTRACT in place I would like ALL of the payments from February 2020 until the conclusion date on this matter, refunded which will equate to over £30k. There is nothing in the contract that states that [Miss D] should be paying anywhere near the 8% interest rate monthly charge she has and is currently paying.'

As I've explained, the contract Miss D entered into is that she would be charged a fixed rate of interest at 5.59% until 31 December 2008, after which she would be charged (for the remainder of the time until she repaid the debt) the lender's SVR.

The mortgage terms and conditions document states 'If you have an interest only mortgage, you agree to repay the capital on the last day of the mortgage term.' It also says 'If you fail to pay any money to us when you are obliged to we may also charge interest at the interest rate on the money from the date on which you should have paid it until it is paid.' So it can be seen, from this, that the lender has the right to continue to charge interest, at the prevailing rate of interest, beyond the original mortgage term if the debt remains outstanding. That is entirely normal and as I would expect, as Miss D still owes that sum to the lender, it is only right she continues to pay interest on that sum.

MAS5 didn't need to issue a new contract to be signed, nor did it need to issue new terms and conditions when it took over the mortgage, as the power to transfer the mortgage was included within the original mortgage contract.

The SVR reduced to 3.99% on 13 January 2009, and then to 3.49% in February 2009. The final reduction at that time was to 2.99% in March 2009.

MAS5 gave notice to its customers that it was increasing the SVR, and the increase took effect from 1 July 2009. That took the SVR to 3.74%.

In August 2009 Britannia merged with The Co-operative Bank plc and, as a subsidiary of Britannia, MAS5 became part of the wider Co-op group of companies. The group comprised of the merged Co-op / Britannia entity (which took the legal name of The Co-operative Bank plc but traded under both the Co-op and Britannia brands), as well as a number of subsidiary companies, several of which were, like MAS5, special purpose vehicles for holding books of bought-in mortgages.

Thereafter there were three further increases to the SVR – in October 2009 (to 4.50%), March 2011 (to 5.25%) and May 2012 (to 5.75%). All four of these increases happened at a time when the Bank of England base rate (“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 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.

MAS5 is a closed book lender – it is a vehicle for holding loans originated elsewhere and later bought up by the then Britannia Building Society group. Following the merger of Britannia and The Co-operative Bank plc, MAS5 continued as a subsidiary firm within the wider Co-operative Bank group. Though part of the Britannia and then Co-op groups, it was at the time of the transfer and remains to this day a separate firm and regulated entity in its own right.

MAS5 manages its existing portfolio of loans but has never been an active lender seeking customers in its own right on the open market. And while it allows customers to make changes to existing mortgages, these do not include changing the interest rate – MAS5 has no fixed or other preferential rates available to any customers. All customers whose initial rates expire will then remain on their contractual reversionary rate (in the case of Miss D, the SVR) unless and until they pay their mortgage off or re-mortgage away to a different lender. Miss D did not do this and so she remains with MAS5 on its SVR.

Whilst MAS5 is regulated by the Financial Conduct Authority (“FCA”) and has to follow its rules, 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 Miss D 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 Miss D. 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. Miss D’s mortgage offer sets out that she would pay interest at a fixed rate until 31 December 2008, and thereafter at the SVR. Nothing in the mortgage offer or the mortgage terms says that Miss D 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 Miss D'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 Miss D 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, Miss D 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 Miss D.

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 Miss D 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 Miss D the same as it treats all its other customers.

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

MAS5 has offered to rework Miss D's mortgage account by reducing the rate on the mortgage by 1.25% from 1 March 2011, with its rate reduction calculation being run up to 30 November 2022.

It says that would put right the higher rate Miss D paid from 1 March 2011 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, Miss D 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

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

mortgage.

The terms and conditions of Miss 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.

Miss D's mortgage offer stated that the interest rate that applied to her mortgage would be a fixed rate of 5.59% 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 its mortgage customers reduced significantly too.

Miss D's mortgage was not actually on the SVR until 1 January 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 31 December 2008, and so MAS5 was charging her that rate (5.59% fixed until 31 December 2008) 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 Miss D's mortgage, as the increases resulted in the rate she's been charged on her mortgage since 2009 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 Miss D'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 Miss 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 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 Miss D's mortgage, it was restoring the rate to what it would have been had the covenant not been in place. And whilst Miss D may not have benefitted as much as other customers (that were on the SVR from earlier than 1 January 2009) from the existence of the covenant, as a result of the fixed rate she was on, I'm not persuaded that's a result of anything MAS5 did wrong.

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 1 March 2011 onwards would provide Miss 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 Miss D agreed to without the covenant in place. To do so would result in the interest rate after 1 March 2011 being lower than Miss D 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 Miss 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 has offered to re-work Miss D's mortgage account from 1 March 2011 (up until 30 November 2022) as if those increases never took place. So I won't consider this point any further, as the offer puts Miss D back in the position she would have been in had the increases not been made.

What happened in November 2022

MAS5 has offered to re-work Miss D's mortgage account as though the interest rate she's been charged since 1 March 2011 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 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 Miss 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 Miss D, 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 Miss D's mortgage MAS5 was entitled to increase the SVR to reflect changes in the 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 Miss D has been charged since 1 March 2011 in the round, and the impact of the 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 Miss D'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 Miss 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 Miss D'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 Miss D 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.

The term end

The term of Miss D's mortgage expired in February 2020, at which point the capital of around £104,000 was due to be repaid.

Whilst Mr D has said the first Miss D was warned of this was in March 2019, MAS5 has provided copies of letters from 2015 which reminded her that her mortgage was held on an interest only basis and that the term was due to end in February 2020. Those letters were addressed in the same way as other letters that Miss D did receive and there is no record of them being returned as undelivered so, on balance, it is more likely than not that Miss D received at least one of them. I must also keep in mind that a contemporaneous call note from August 2019 indicates Mr D told MAS5 at that time that Miss D had been sitting on the fact the mortgage is due to end for about three to four years, which ties in with those letters of 2015 having been received by Miss D, or that she had received some other reminder of the term end in around 2015/2016.

The information about the remaining term and the need to repay the capital balance has also been on each of the annual mortgage statements issued. Those showed, each year, the remaining mortgage term (in months) and a warning that it is an interest only mortgage:

'This is an Interest Only Mortgage. Your mortgage payments do not include the costs of any savings plan or other investment you may have arranged to build up a lump sum to repay the amount you borrowed. It is important to check regularly that your savings plan or other investment is on track to repay the mortgage at the end of the term.'

I was sorry to read what Mr D has told us and MAS5 about the impact this has had on Miss D, and I'm sympathetic to the considerable impact this has had on her. I've not gone into any detail about that in this decision to protect Miss D's privacy once the decision is published. But I'd seek to reassure Mr D that I've read and taken into account everything he's said.

I understand how frustrating Mr D has found it trying to find a way forward for Miss D's mortgage, saying he has spent hours talking to different departments, and he has been denied face to face meetings and not given email addresses or direct dial numbers for a specific person who could deal with it.

MAS5 is set up to deal with mortgages that are coming to - and have come to - an end of their term on a team-based telephony basis. It doesn't hold face to face meetings, nor does it correspond by email or appoint a specific person to deal with the account. Whilst I acknowledge those would be Mr D's preference, I've not seen anything to indicate he can't deal with this in the same way as MAS5's other customers (whether that is those customers directly, or a representative acting on behalf of the customer as Mr D is here). I understand Mr D feels this is a very sensitive case so needs to be dealt with in a different way, but I've not seen anything to indicate this is any different to any other of MAS5's mortgage accounts that are coming – or have come – to an end. All those other customers will have their own worries and concerns, may well feel their own mortgage is a very sensitive case, and will also be looking for a way forward.

In considering this part of the complaint, I take as my starting point the fact that, in taking out this interest only mortgage, Miss D agreed to repay the capital in February 2020. And, all other things being equal, it's reasonable to expect her to have done so. However, when she reached the end of the term and found herself unable to do so, I would have expected MAS5 to look fairly at her circumstances, show appropriate forbearance and try to work with Miss D to find a way for the mortgage to be repaid.

Repossession of the property should always be a last resort. But forbearance does not mean that MAS5 can't collect the outstanding balance or must wait indefinitely for it to be repaid. Forbearance means working with Miss D to find a way for it to be repaid without the need for repossession. And there may come a point where, if there's no prospect of the mortgage being repaid within a reasonable time, repossession becomes a reasonable step for it to take.

In saying that, I've taken into account the FCA's rules and guidance, including the guidance on 'Dealing fairly with interest-only mortgage customers who risk being unable to repay their loan' as well as its later Thematic Review, 'The fair treatment of existing interest-only mortgage customers.'

I've also taken into account MCOB¹ 13, which, as the guidance points out, does not strictly apply in this situation since an outstanding capital balance does not constitute arrears or a payment shortfall – but which nevertheless represents good practice in the collection of sums due. And MCOB 13 does apply to any repossession action.

I've already found that there was no unfairness in the fact that Miss D was on the SVR or in MAS5 not offering her a new interest rate. I have found that the level of the SVR was unfairly high from 1 March 2011 onwards – in that I don't think it was fair for MAS5 to rely on the 1.25% increase from 2011 and 2012 as part of the rate that it charged her over this period.

Had those increases not formed part of the rate Miss D was charged from 1 March 2011, her monthly payment would have been lower. On a balance of £104,000, an extra 1.25% on the interest rate approximates to an extra £108 on each monthly payment.

Given what we've been told about Miss D's circumstances, I don't think it is likely that Miss D would have chosen to pay that additional £108 a month to the mortgage debt, to reduce the capital balance, had MAS5 not overcharged her for that period. For that reason, I'm satisfied that Miss D wasn't prevented from reducing her mortgage balance over the years because of the interest rate she was charged by MAS5. And I'm satisfied that my findings that the interest rate was unfairly high from 1 March 2011 are not the cause of Miss D's inability to repay the capital at the end of the term.

I'm satisfied that MAS5 tried to work with Miss D to find a solution. Miss D wanted a term extension and a new lower interest rate product. MAS5 didn't agree to that, and I don't think that's unreasonable. I'll explain why.

As I say, the starting point is that the mortgage needs to be repaid, and MAS5 is entitled to expect that. Miss D didn't have a proposal for repaying the capital at the end of any extended term if it remained on an interest only basis – there was, for example, no investment due to mature at that time.

This means that at the end of any extended term she would likely be in the same position as she was in 2020; with a substantial capital balance and no means of repaying it other than

¹ Mortgages and Home Finance: Conduct of Business Sourcebook
<https://www.handbook.fca.org.uk/handbook/MCOB>

selling her property.

If the only option to repay the mortgage is the sale of the property, then I don't think it's unreasonable to conclude that it would be better to do that sooner rather than later. So while from the point of view selling the property might not be what Miss D wants, and would be a difficult thing to do emotionally, I think the reality is that hard as it might have been it would only be harder many years later if a term extension was granted on an interest only basis.

With that in mind, I'm not persuaded that a term extension on an interest only basis would have been in Miss D's best interests; it was more likely to make a bad situation worse.

Therefore, given that MAS5 was entitled to expect the mortgage to be repaid, and given that extended forbearance in the form of a term extension wouldn't resolve the problem – and risked making it worse – I think it was fair that it didn't agree to a term extension.

I think it's also reasonable to be concerned about how practical this proposal was in any event. Miss D was about to retire and Mr D had been clear that once that happened her income would drop to around £600 a month (from which she would need to pay all her bills, buy food and make any mortgage payments). That said, the affordability check completed by MAS5 indicated an income in retirement of around £730 a month.

The regulator's guidance which I've cited above sets out examples of potential options for firms to consider when a capital balance cannot be repaid. These include:

- Switching to repayment terms
- Extending the term, including a switch to full or part repayment terms
- Extending the term to provide more time to repay the capital or sell the property
- Accepting overpayments to reduce the balance
- Part redemption alongside any of the above
- Extending the term on an interest only basis
- Any combination of the above

Although the guidance points out these are examples and not an exhaustive list, these are the principal options open to a lender in a case like this.

In this case, MAS5 considered converting the mortgage to repayment terms over a much longer term, but the monthly payments for that wouldn't have been affordable. And while the term could have been extended on interest only terms, there would still need to be a means of repaying the capital at the end of any extended term as I've covered above.

MAS5 couldn't offer any new products itself to try to make a potential repayment mortgage more affordable, it could only look at that option on the basis of Miss D remaining on its SVR.

From November 2019 MAS5 was able to offer its customers the opportunity to apply for an 'internal re-mortgage' to a Britannia branded mortgage. That wasn't something that was available before then, and when it was made available, I understand Miss D was one of the first customers it considered, in light of how close she was to the end of her term and the lack of other available options. As part of that process the group made some adjustments to

its lending criteria, with the aim of trying to make an internal remortgage available to as many of MAS5's customers as possible.

Unfortunately, even with the adjustments to the lending criteria, Miss D didn't pass the affordability checks as such a remortgage would have needed to be on a repayment basis (for the reasons I've explained above about why Miss D couldn't continue with an interest only mortgage). Even at an interest rate of 1.74% the payment would have been over £500 a month, against her projected retirement income of £600 a month (from Mr D) or £730 (based on MAS5's assessment). That's before MAS5 would have needed to take into account a stress test as it couldn't assume Miss D would be charged a rate as low as 1.74% for the entire new 20-year term as that would have just been for a fixed period (whether that was perhaps for the first two years or the first five years). I'm satisfied this option was fairly considered by the lending group, but it simply wasn't sustainable to move Miss D onto a repayment mortgage even if the term was extended to age 85 and the new initial interest rate was 1.74% (which is the rate Mr D said he found was available based on his own research).

As I've already explained, there wasn't going to be any means of repaying the capital at the end of any extended term which wasn't already available to Miss D when the term ended in 2020. And a term extension going beyond initial forbearance to give her time to find a way to repay or sell the property was likely to make her situation worse in the long term.

For all those reasons, I'm satisfied that it was fair and reasonable in all the circumstances for MAS5 to expect Miss D to repay her interest only mortgage. MAS5 has showed reasonable forbearance, trying to work with Miss D to find a solution that would allow the mortgage to be repaid within a reasonable time.

In December 2019 MAS5 offered to extend Miss D's mortgage by three months, until May 2020 to give Mr D and Miss D time to look at alternative options. And then in April 2020 it agreed a further hold until 3 October 2020, saying that if progress had been made towards a solution to repay the outstanding balance in that time, then a further six-month hold could be considered. It also granted a three-month coronavirus payment deferral from May 2020. A further three-month coronavirus payment deferral was granted for August to October 2020.

We're now nearly five years on from the original term ending, and the mortgage remains outstanding, and once this complaint is concluded MAS5 may choose to move forward with recovery action. Acting fairly and reasonably, it should engage with Miss D first to see if she is now in a position to repay the capital balance. Miss D will need to work constructively with MAS5 and find a way forward. But ultimately if the mortgage balance remains unpaid MAS5 will be entitled to take action to recover it.

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 Miss D is fair. For clarity, that methodology is that MAS5 should re-work Miss D's mortgage account by reducing the rate on the mortgage from 1 March 2011 to 30 November 2022. As the mortgage term has already ended the payment will be used to reduce the outstanding mortgage balance as that is overdue.

I'm satisfied the offer it has made puts Miss D back in the position she would have been in, had MAS5 applied a fair rate of interest from 1 March 2011 onwards. The offer of 2 April 2024 was to reduce the mortgage balance by £21,092.45 (which, if now accepted by Miss D, should be credited to the mortgage backdated to 2 April 2024 so no additional interest has been charged on that amount since the date of the offer) plus a payment of £450 to be made directly to Miss D in recognition of the distress and inconvenience caused by this matter.

I understand Mr D feels a higher payment of compensation is warranted, saying Miss D has suffered for over 15 years, and could be made homeless. But I can only award compensation for the parts of the complaint I am upholding.

I've not upheld a complaint about Miss D having an interest only mortgage, nor have I said MAS5 has acted unfairly in how it has treated Miss D in respect of the mortgage term ending. So whilst I have a great deal of sympathy for Miss D's situation, I can't make any award in respect of her potentially becoming homeless. I also can't make an award for the fact MAS5 has been unable to offer her a new rate over the term of the mortgage, as I also haven't upheld that point for all the reasons given.

The only point that has been upheld is that Miss D has been overcharged interest by 1.25% between 1 March 2011 and 30 November 2022, a sum I calculated to be around £108 a month. Whilst that is an overcharge, and shouldn't have happened, that is being put right – in itself – by the offer that was made by MAS5 in April 2024 to reduce the mortgage debt by £21,092.45. Having considered everything both sides have told us, and keeping in mind what awards have been made in other similar cases, I'm satisfied the £450 offered by MAS5 in April 2024 is fair and reasonable.

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 settle the complaint in line with its offer of 2 April 2024, with the mortgage being reduced by the calculated amount other than the £450 compensation which should be paid directly to Miss D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 29 November 2024.

Julia Meadows
Ombudsman