DRN-5305297

The complaint

Mr and Mrs S complain about the interest rate that Mortgage Agency Services Number Five Limited (MAS5) has applied to their mortgage.

What happened

In 2007, Mr and Mrs S took out an interest only mortgage over a term of 23 years with GMAC RFC. The mortgage had a fixed rate of 3.89% until 30 June 2009. From 1 July 2009, a standard variable rate (SVR) would apply.

In 2008, the mortgage was transferred to MAS5. This complaint is that MAS5 has administered the SVR on Mr and Mrs S's mortgage. They complain that when they took out the mortgage they were told it would track the Bank of England base rate (the base rate). But the mortgage has always been significantly higher than the base rate. They would not have taken such a high interest rate if they'd known how it would operate. They said they are struggling to cope with the increases to SVR, particularly since 2022. Mr and Mrs S said they are unable to find another mortgage deal so they are trapped with MAS5

I issued a jurisdiction decision explaining that I could not consider any complaint about events before 1 June 2018.

The investigator said MAS5 had offered to re-work Mr and Mrs S's mortgage as if the interest rate charged was 1.25% lower from 6 November 2017 to 30 August 2022, 0.75% lower from 1 September 2022 to 31 October 2022 and by 0.25% from 1 to 30 November 2022. He thought that was a fair offer. I later added that I did not think MAS5 had treated Mr and Mrs S unfairly in regard to the level of support it had offered them when interest rates went up.

Mr and Mrs S did not accept what we said. They said, in summary, that they did not understand why the SVR was over 9% or how that was fair. They said that the reason they have other debts is because of the interest rate charged by MAS5.

.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.

MAS5 has already offered to re-work Mr and Mrs S's mortgage as if the interest rate charged was 1.25% lower from 6 November 2017 to 30 August 2022, 0.75% lower from 1 September 2022 to 31 October 2022 and by 0.25% from 1 to 30 November 2022. That is in line with our approach to these types of complaints against MAS5. In fact, MAS5's offer goes back further than I am able to consider because of the time limits I explained in my jurisdiction decision.

MAS5 increased the SVR charged on Mr and Mrs S'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 and Mrs S's mortgage from 19 November 2017 up until November 2022 as if those increases never took place. So I won't consider this point any further, as the offer puts Mr and Mrs S back in the position they would have been in had the increases not been made for the time period that is in scope of this complaint.

MAS5's offer only goes up to 30 November 2022. It has said this is because it made the decision in 2022 not to pass on the full Bank of England base rate rises to customers when they could have done. That resulted in the SVR being 1.38% lower than it would have been had it passed on the full extent of the increases. It has said if the SVR had in fact been 1.25% lower than it was before 2022, as we've said it should have been, it would have taken the decision to pass on all of the base rate rises when they took place in 2022. This would have ensured that the SVR was priced at an appropriate level for its risk profile and market position. Therefore, the rate would have ended up 0.12% higher than it actually was in December 2022.

MAS5 has provided our service with evidence to support its arguments, including the factors the wider banking group considered when it was deciding whether to pass on the base rate rises to customers in 2022. It's clear the priorities for the banking group were to balance increases to the SVR to reflect increases to cost of funds with keeping down increases to maintain their market position, and to minimise customer stress. While that wasn't the case specifically for Mr and Mrs S's mortgage – since there's no evidence of a change in the costs of funding MAS5 itself at this time, the position of the MAS5 SVR comparative to the SVR charged to 'prime' customers in the group was also a key factor.

If the MAS5 SVR had been 1.25% lower than it actually was, it would have been lower than the SVR charged by other lenders within the group, as well as other lenders in the wider prime mortgage market.

Having considered the evidence MAS5 have provided, I'm satisfied that on balance, if the SVR had been 1.25% lower than it was at the start of 2022, MAS5 would have increased the SVR by more than they did during 2022, by passing on all of the base rate rises. That would have been permitted under the terms and conditions of Mr and Mrs S's mortgage.

However, although I'm persuaded that's what MAS5 would have done, I still have to consider whether that would have been fair and reasonable in order to determine whether the offer MAS5 have made is a fair resolution to this complaint. It's important to remember it is not the role of our service to decide what a fair interest rate should be. However, I can determine whether I think MAS5 has acted fairly when considering how to vary the rate it's charged Mr and Mrs S, and the impact that's had on them.

MAS5 has provided evidence of the risk profile of the mortgages it holds in comparison with the banking group's 'prime' mortgages. I'm satisfied that information shows that there is a greater cost to the group when a MAS5 mortgage defaults, and there is also a much higher risk of those mortgages defaulting. I don't think it's unreasonable that MAS5 considered that risk when deciding where their SVR should sit not only in relation to the 'prime' SVR charged by other lenders in the group, but also the wider mortgage market. I'm satisfied that had the SVR been 1.25% lower than it was, and MAS5 had not decided to pass on the base rate rises in 2022, the resulting SVR would have been significantly lower than not only the group's 'prime' SVR, but also the SVRs charged by mainstream lenders in the wider market.

Under the terms and conditions of Mr and Mrs S'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 and Mrs S has been charged since 19 November 2017 in the round, and the impact of the previous unfair increases that resulted in that rate, I'm persuaded on balance that any previous unfairness was essentially 'put right' by the decisions MAS5 made when it varied the rate in the way it did in 2022. And so, to instruct MAS5 to make an ongoing reduction to Mr and Mrs S's interest rate when that rate would be much lower than the rate they would actually have been on had MAS5 not done anything wrong, would be putting them in a better position than they ought to have been. To continue the redress beyond November 2022 means that Mr and Mrs S 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 and Mrs S's mortgage would ever have been in a situation where both those things happened, and therefore to require MAS5 to reduce his interest rate as if both had happened would be over-compensation.

I appreciate Mr and Mrs S feels that their rate is still too high currently, and they feel it would be fair for their 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 they are now paying is not significantly out of line with reversion rates being charged by other lenders of similar mortgages.

Looking at the terms of the mortgage that Mr and Mrs S took out, there was no obligation for MAS5 – or mortgage lenders generally – to offer its borrowers new or preferential interest rates to replace a reversionary rate. Just as there was no contractual term, there is no law, rule or regulation that compels a lender to offer a new interest rate product. So I can't say that MAS5 was required to offer Mr and Mrs S a new interest rate.

MAS5 is required to treat borrowers in financial difficulty fairly. There are also a range of measures to support borrows affected by the cost of living crisis – although the support it can offer might be limited because Mr and Mrs S already have an interest only mortgage.

Mr and Mrs S would need to contact MAS5 directly if they are struggling financially – and MAS5 should explore what it can do to help. It may need to gather information abut Mr and Mrs S's income, expenditure and circumstances to do that.

I understand that Mr and Mrs S might already have accepted the offer from MAS5 – but if not, they should contact it directly to do so.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S and Mrs S to accept or reject my decision before 4 March 2025.

Ken Rose
Ombudsman