

The complaint

Mr S complains that Mortgage Agency Services Number Four Limited (MAS4) paid 50% of a refund of overcharged interest on his mortgage to the joint borrower, even though they are estranged and it was Mr S that made all the payments in the first place.

What happened

Mr S and his former partner had a joint mortgage with MAS4. They separated some time ago and Mr S says that since then he has taken responsibility for the mortgage and made all the payments. But it remains in joint names. Mr S says that he's applied to MAS4 to convert it into a sole mortgage in his name several times without success. More recently, Mr S took out a mortgage in his sole name with another lender, repaying the MAS4 mortgage.

MAS4 has identified that it overcharged interest to certain customers. It calculated the overcharged amount and wrote to affected customers offering refunds. In this case, it split the refund into two halves, and sent cheques for 50% of the total to each of Mr S and his former partner. As the total refund was just over £13,100, Mr S received just over £6,500. Mr S had not raised a complaint about interest and was not expecting to receive a refund, and he was not consulted before MAS4 decided to split the refund equally.

Mr S complained to MAS4. He said that in order to make the new mortgage affordable, he had had to reduce the balance using some of his pension savings – leading to a tax liability on the money he had withdrawn from his pension. Shortly after completion he received a letter saying that he was due a refund of interest for the period November 2017 to November 2022, and that half was being paid to him and half to his former partner. He said that he had lived in the property alone, and paid the mortgage alone, throughout that period. His former partner had made no contribution to the mortgage. Mr S had paid her a lump sum to buy out her share in the equity of the property and she no longer had an interest in the property. He said this reflected a court order following their divorce. He said that the balance should have been reduced before redemption rather than paying out a cash sum – or, if that wasn't possible, the full redress amount should have been paid to him alone.

MAS4 said that notwithstanding the court order, the mortgage remained in joint names and both Mr S and his former partner remained jointly and severally liable for it. It was therefore required to pay the redress to both borrowers, splitting it between them. It said that if either party believed they were due more redress because of how the account had been managed, that was a matter to resolve between them. It offered £50 compensation for delays in dealing with his complaint.

Our investigator didn't think MAS4 had acted unfairly. So Mr S asked for an ombudsman to review his complaint. I reached a different opinion, so I issued a provisional decision setting out my thoughts on the case and inviting the parties to respond.

My provisional decision

I said:

"It was unfortunate timing that MAS4 wrote to Mr S with the redress offer shortly after he'd redeemed the mortgage. But I don't think it was more than that. MAS4 was carrying out a redress exercise involving a large number of its customers and that took time. It didn't get to Mr S's account before he'd redeemed the mortgage.

Where I think MAS4 acted unfairly is in the decision it made once it had assessed Mr S's mortgage. It knew that Mr S and his former partner had separated and were in dispute. In those circumstances, I don't think it should simply have assumed that the redress was to be split 50:50 and sent half of it to each of them.

I don't agree that MAS4 must do that, or that there is a legal requirement for it to split the redress in this way. The terms and conditions of the mortgage are silent on what happens in this situation. And while Mr S and his former partner were jointly and severally liable for the mortgage, it doesn't automatically follow from that that each is entitled to 50% of the refunded interest. Joint liability means that they are jointly liable for the whole amount; several liability means they are each separately liable for the whole amount; and joint and several liability means that both those things are true. But it doesn't mean that each is liable for 50% of the balance.

Any refund was therefore payable to them jointly as joint borrowers. But that doesn't mean it had to be split 50:50. How the redress was to be divided up between them would be a matter for Mr S and his former partner to agree between them. That wasn't a decision MAS4 could make, and it's not a decision I can make either.

In my view, acting fairly, MAS4 should not have made that decision for itself unilaterally, and without checking with Mr S and his former partner. It knew they were separated and that Mr S was paying the mortgage. His former partner had told MAS4 she didn't want anything to do with it. It was therefore foreseeable that Mr S might not agree to a 50% split.

However, I don't agree with Mr S either. I don't think it would be fair to expect MAS4 to have paid all the redress to him without further discussion. Even if in practice Mr S had made all the payments during the redress period, his former partner as a joint borrower also had an interest in the redress.

I think that, acting fairly, MAS4 ought to have recognised that they had separated and had been in dispute. Rather than writing to both parties out of the blue enclosing cheques for 50% each, it ought to have written to both parties telling them of the total redress offer, and then asking them to agree between themselves how the redress should be paid and instruct MAS4 accordingly.

If Mr S and his former partner had, given that opportunity, been able to reach agreement then MAS4 should have paid the redress according to that agreement. If they were unable to reach agreement, it might have been necessary for them to seek further legal advice or mediation to resolve that dispute before going back to MAS4 to confirm how payment should be made.

Had that happened, Mr S would have had the chance to discuss the redress offer with his former partner, and seek her agreement to his position that as the person who had made the payments the redress should be paid to him.

It doesn't follow, however, that MAS4 should pay him the other 50% now. It has paid out the full redress to the joint borrowers. It wouldn't be fair to require it to pay a portion of the redress again. Neither MAS4 nor I can make a determination that Mr S is entitled to 100% of the redress and his former partner is not entitled to any of it.

That may have been the agreement they came to given the chance – or it may not have been.

Ultimately it's for Mr S and his former partner to decide between them how the redress should be divided. That would have been the case had MAS4 asked them in advance, and it remains the case now. Mr S will need to try and resolve this with her – and consider options such as taking legal advice if that doesn't prove possible. Having made the payments himself might give him a strong case that the redress should be paid to him, but there are other factors too. Mr S and his former partner remained jointly and severally liable for the mortgage until it was repaid, and therefore were jointly and severally entitled to the redress. How it should be divided is a matter for them. MAS4 should have given them the chance to decide that, rather than assuming that it must be a 50:50 split.

However, now that MAS4 has paid 50% to his former partner, it will be harder for Mr S to ask for her to pay it to him after the fact than it would have been to seek agreement before it was paid out. In my view, therefore, the fair way to put things right is not to require MAS4 to pay the other 50% to Mr S. The fair way to put things right is for MAS4 to compensate Mr S for the lost opportunity to reach an agreement before payment was made, and for the fact that it will now be harder for him to reach any agreement other than a 50:50 split after payment has been made.

I don't think I can safely find that this caused Mr S any financial loss – because I don't know what agreement they would have reached given the chance. It may not have been a 50:50 split, but it may have been. And if, as is very possible, no agreement could have been reached, Mr S would have ended up in the same situation he is in now, in dispute with his former partner about how to split the redress. But I do think this failure has caused him distress and inconvenience, for which MAS4 should compensate him. I think £400 compensation is fair in all the circumstances. This is in addition to the £50 it separately offered for delays in responding to his complaint, which should also be paid."

MAS4 accepted my provisional decision. But Mr S didn't agree. He said:

- He and his former partner separated many years ago and there was a court order finalising the financial arrangements in 2019. As a result of that order, the property became Mr S's alone, and he undertook all liabilities in respect of it. And he had paid the entire mortgage himself even before that.
- MAS4 repeatedly refused to transfer the mortgage to Mr S's sole name. Nor did it advise him of the consequences of his former partner remaining party to it. As a result, the mortgage was no longer fit for purpose and was mis-sold from this point.
- Mr S had already paid his former partner for her share of the property. She has no entitlement to the property or mortgage and so making payment to her has caused him a financial loss.
- MAS4 hadn't made any checks of or changes to the mortgage until after it had been redeemed. If there was an error with the interest rate, it should have been noticed before then. MAS4 didn't have appropriate safeguards in place.
- In order to re-mortgage away from MAS4, Mr S had to draw on his pension and incur a tax liability. If the balance had been reduced sooner, that wouldn't have been necessary.

- Alternatively, if Mr S has to pay for legal advice to try and recover the additional amount from his former partner, that is a financial loss too.

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.

I'm sorry that Mr S was unhappy with my provisional decision, and I do understand why he feels that the full amount should be payable to him alone.

The court order dealing with their financial separation doesn't change the fact that both were parties to the mortgage. The court can't require MAS4 to remove either party or make other alterations to the mortgage. And any past applications Mr S made to take the mortgage over into his sole name aren't part of this complaint.

The fact is that the mortgage was in joint names until it was redeemed. As I said in my provisional decision, MAS4 knew there was a dispute following a relationship breakdown, and in those circumstances it ought to have checked how Mr S and his former partner wanted the redress split, rather than just assuming it would be a 50:50 split and paying half to each.

But as I also explained in my provisional decision, I don't think it would be fair to require MAS4 to pay Mr S the other 50% of the redress now. It has already paid out the full amount to the joint borrowers. What should have happened is that they had the chance to agree between them who should get what before payment was made. That will still need to happen now. I accept that it might be harder for Mr S to resolve with his former partner after payment has been made. But they would always need to have come to an agreement; neither MAS4 nor I can resolve a dispute between them.

I can't make an award for legal costs, because there's no evidence that Mr S has incurred any. But if he can't reach agreement with his former partner, and he does incur legal costs in successfully recovering part of the payment, that may be something he can raise with MAS4 at that time.

I also understand Mr S's frustration that the redress payment was made after the mortgage had redeemed and not before, when it would have been used to reduce the balance. That was unfortunate. But I don't think that means MAS4 acted unfairly. It was working through all affected customers, and that takes time.

In all the circumstances, I remain of the view that while it wouldn't be fair to require MAS4 to pay the other 50% to Mr S, it should compensate him for the distress it has caused – as well as the inconvenience of having to try to resolve things with his former partner after, rather than before, payment was made. I still think £400 – in addition to the £50 already offered for complaint handling – is fair.

My final decision

My final decision is that Mortgage Agency Services Number Four Limited should pay Mr S £450 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 January 2026.

Simon Pugh
Ombudsman