

The complaint

Ms L complains about the interest rate charged on her mortgage with Mortgage Agency Services Number Five Limited (MAS5) from when her fixed rate ended in 2009. She says it was too high and has caused her a financial loss.

Ms L's complaint has been brought to us by a representative for her. But, for ease, I'll mainly refer to the complaint as being brought by Ms L throughout the decision.

What happened

Ms L had a mortgage with MAS5. It was in joint names with her husband who sadly passed away in 2016. The mortgage was on a fixed rate from when it started in 2007 to 2009, at which point it reverted to MAS5's standard variable rate (SVR). The mortgage was repaid in May 2019.

In October 2024, MAS5 wrote to Ms L to say that following a decision by our Service on another complaint (not brought by Ms L) it accepted it had charged more interest than it should've on Ms L's mortgage. This letter set out that it was offering to refund the overcharged interest in line with that decision. MAS5 explained that it was offering this refund for interest charged from six years prior to the date of this decision (November 2023) which meant the interest refund would be calculated from 1 November 2017. As Ms L repaid the mortgage in May 2019, this is when it would end its calculation for redress. The redress calculation used was in line with our previous decision.

Ms L disagrees with MAS5's approach of limiting redress to six years before the 2023 decision made by our Service. She also says the 1.25% reduction MAS5 has used in its redress calculation isn't fair, and that its use of "notional interest rates" doesn't reflect the market rates at the time. Ms L referred the complaint to our Service.

One of our Investigators considered the complaint but was satisfied that MAS5's offer was fair and reasonable in the circumstances. Ms L didn't accept this, so the complaint had been passed to me to consider.

I issued a decision on the jurisdiction of our Service, specifically in relation to whether the complaint had been referred to us in time. In summary, I explained that I can only consider a complaint about the interest rate applied to Ms L's mortgage by MAS5 from November 2017. However, the interest rate charged from November 2017 onwards is the result of the cumulative rate changes that took place beforehand. And so, it is therefore appropriate for me to consider the interest rate history of Ms L's mortgage account dating back to when it was taken out in 2007, to determine whether the interest rate MAS5 have charged from November 2017 onwards was fair and reasonable.

Ms L's representative responded to this jurisdiction decision in detail. He reiterated the reasons why he felt redress should be calculated from 2009, rather than November 2017 as I set out in my decision. He also set out the reasons behind the complaint again with supporting evidence.

I'm now in a position to issue a final decision on the merits of the complaint for the timeframe I have jurisdiction to consider.

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.

First, I want to reassure Ms L and her representative that I have again thought about what they've said with regards to when redress ought to start being calculated from. I remain satisfied that this should be November 2017, as per my jurisdiction decision. I've considered the points that Ms L's representative has raised, including his assertion that exceptional circumstances apply here. However, these are all points that had previously been submitted to us. And I considered them as part of the previous decision. I'm therefore satisfied that the time period we can consider is that which I set out in the jurisdiction decision (and above) for the same reasons. Put simply, our rules do not allow us to award redress for interest that may've been charged prior to November 2017.

Moving on to the complaint merits for the time period I can consider, Ms L and her representative have responded to our Investigator and my jurisdiction decision in great detail, raising a number of points. I want to reassure them both I've considered everything they've said. I'm not going to address each and every point they've raised. Instead, I'll focus on the crux of the complaint. I hope they realise I mean no disrespect by this. It simply reflects the nature of our Service as an informal alternative to the courts.

MAS5 have made an offer to settle Ms L's complaint by re-working her mortgage account as if the interest rate she was charged between November 2017 and when the mortgage was repaid in June 2019 was 1.25% lower than what MAS5 did actually charge.

MAS5 says that would put right the higher rate Ms L paid from November 2017 as a result of the increases made to the SVR in 2011 and 2012.

Ms L says this isn't fair because:

- The compensation should be calculated from when the fixed rate ended in 2009, not from November 2017.
- The 1.25% reduction doesn't reflect the difference between the SVR and Bank of England base rate at the time.
- 8% simple interest isn't fair as it doesn't take into account the effect of inflation on money, and it isn't compounded in the calculation.

As Ms L and her representative are aware, we've considered this issue carefully before. And have issued a previous decision which MAS5 now uses as the base for its offers to its borrowers.

Ms L has argued this shouldn't set a precedent for her complaint. I agree that each complaint should be considered on its own merits – but also that it's reasonable to expect firms to learn from previous decisions, and that like complaints should be treated alike. Ms L is in the same position as the other complainants who we've previously found were overcharged by MAS5. I've considered the offer MAS5 has made and the general approach we've taken to cases of this nature. And I'm satisfied that MAS5's offer is fair and reasonable in all the circumstances of this complaint. I'll explain why in detail now, addressing the SVR increases by MAS5 in 2009, 2011 and 2012.

The SVR increases in 2009

Ms L'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. MAS5 referred to this as the restrictive covenant. That term did not form part of the contract between Ms L and the lender, it was an agreement between the two businesses and did not alter the original terms and conditions that Ms L agreed to when she took out the mortgage.

The terms and conditions of Ms L'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.”

Ms L's mortgage offer stated that the interest rate that applied to her mortgage would be fixed for two years, 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. Those increases did impact Ms L's mortgage, as the increases resulted in the rate that Ms L's mortgage reverted to in 2009, and the rate she's been charged on the mortgage since.

MAS5 have 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 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 Ms L'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 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 Ms L'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 mortgage customers was lower than it would have been had the covenant not been in place. As a result, Ms L received the benefit of paying a lower reversionary rate than she would have been charged were it not for the covenant. I think that's a reasonable factor to take into account when considering whether it's fair to award redress for interest charged after 2017 that was impacted, in part, by the 2009 increases.

Whilst MAS5 may have increased the SVR when the covenant ended for reasons that weren't permitted under the terms and conditions of Ms L's mortgage, I'm not persuaded that resulted in unfairness to Ms L. That's because I think it's likely that the SVR would have been higher had the covenant not been in place. The covenant wasn't part of Ms L's mortgage agreement, and I don't think it would be fair and reasonable to require MAS5 to, in effect, treat Ms L's mortgage as if the covenant was still in place after 2017 when it came to an end in 2009.

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 Ms L has been charged since November 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 November 2017 onwards would provide Ms L 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 Ms L agreed to without the covenant in place. To do so would result in the interest rate after November 2017 being lower than Ms L could reasonably 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 Ms L'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 their mortgage lending business. I am not satisfied that the evidence MAS5 have sent us shows that there was actually an increase in MAS5's own cost of funds at that time. MAS5 has now offered to re-work Ms L's mortgage account from November 2017 up until the mortgage was redeemed in 2019 as if those increases never took place. I'm satisfied this offer puts Ms L back in the position she would have been in had the increases not been

made (for the time period that is in scope of this complaint). This is why I'm satisfied that the 1.25% reduction MAS5 has offered is fair and reasonable in the circumstances.

The SVR increases in 2017 and 2018

Our Investigator found that MAS5 didn't communicate these changes properly to Ms L. I agree, it sent the notifications to a wrong address. Whilst this would've been frustrating for Ms L, part of the offer from MAS5 will involve these increases being reduced by 1.25%. Overall, I'm satisfied this is fair – especially bearing in mind that while MAS5 might have made mistakes in how it notified her, I don't think the increases themselves were unfair because they reflected changes to base rate at those times. And I don't think I should ask MAS5 to pay further compensation in this regard.

8% simple interest being applied

Ms L has argued this isn't a fair rate to apply given it doesn't take into account inflation and isn't compounded. We've long taken the approach that 8% simple interest is fair when someone has been denied the use of funds. Whilst this changed at the start of this year, that only applies to cases referred to us from 1 January 2026 and our new approach would mean Ms L receiving less than MAS5 has offered. I'm satisfied that 8% simple interest is fair in these circumstances as it's broadly aligned with the court judgment debt interest rate and it's in line with the average costs of having to raise the funds by standard unsecured borrowing had Ms L had to do so (which I'm not aware she did). Although it's not compounded, Ms L will receive interest payments for the entire period she has been out of pocket. I'm satisfied that's a fair way of compensating her for that.

I'm therefore satisfied that applying 8% simple interest in this situation is fair and reasonable in all the circumstances.

Ms L's representative seems to be under the impression that it's simply 8% that is added to each payment that is refunded on a one-off basis, regardless of when the payment was first made to MAS5. That is not my understanding though. 8% simple should be added on an annual basis from the date of each payment to the date the refund is provided to Ms L. That's how MAS5 has previously provided redress in similar complaints, and I can't see its offer in this case is any different. This provides redress for the loss of the use of the funds for the time period from the additional payments being charged, until it is refunded. This is fair and reasonable.

Lastly, Ms L's representative has provided us a detailed breakdown of calculations he believes is how MAS5 should calculate redress. Our Service isn't set up to check redress calculations. Instead, we set out the method in which a business must provide redress, and the business will then calculate this. I've seen nothing within the offer of redress MAS5 previously made that appears incorrect. However, if Ms L believes this is incorrect, she will need to have this independently checked by a suitably qualified expert and provide this to MAS5 for its comments.

Putting things right

For the reasons I've explained, I'm satisfied MAS5's original offer is fair and reasonable. So, to put things right, I require it to implement the redress it previously offered to Ms L in its letter dated 8 October 2024. This will need to be recalculated to include the simple interest calculation to the date the settlement is paid.

*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 Ms L

how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I direct Mortgage Agency Services Number Five Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 17 February 2026.

Rob Deadman
Ombudsman