

The complaint

Mr B and Ms C complain that Mortgage Agency Services Number Five Limited (MAS5) has treated them unfairly in its administration of their mortgage.

What happened

Mr B and Ms C took out a mortgage with another lender in 2006. The mortgage was initially taken on a two-year fixed interest rate deal which expired in 2008. During their initial fixed-interest period, their mortgage was transferred from their existing lender to MAS5 in 2007.

MAS5 is an inactive lender. So, once Mr B and Ms C's initial two-year fixed interest period came to an end, it was unable to offer them a new interest rate product and they reverted to its Standard Variable Rate (SVR) upon which they have remained ever since.

Ms C, on behalf of both her and her husband, has raised multiple concerns regarding the way MAS5 has treated them over the years. For the purposes of this complaint, those points can be summarised as:

- The transfer of their mortgage to MAS5, an inactive lender, was unfair.
- It did not comply fully with their Data Subject Access Request (DSAR).
- The interest rate it charged has led to them needing to rely on Support for Mortgage Interest loans (SMI) which they would not have needed to do had it applied the correct rate of interest.
- MAS5's arrears collections activity has been unlawful and not in line with the Financial Conduct Authority's (FCA)'s regulations, including its attempts to pressure them into an Assisted Voluntary Sale (AVS) on several occasions.
- MAS5 unfairly declined a request to place a second charge against the property and did not engage appropriately with Mr B and Ms C's local council.

MAS5 investigated Mr B and Ms C's concerns but did not uphold their complaint. Dissatisfied with its response, Ms C referred the complaint to our Service. Whilst this is a joint complaint, Ms C has told us Mr B's health prevents him from engaging with MAS5 or this Service. So, while the complaint is in both names, Ms C has provided the majority of the representations on behalf of both her and her husband.

As parts of Mr B and Ms C's complaint related to events that took place more than six years before they complained, I issued a decision setting out which parts of Mr B and Ms C's complaint we could and could not look at. In summary, I found that we could look at all events complained of from 7 December 2016 to the date of complaint on 7 December 2022. Any events complained about before 7 December 2016, such as arrears collection activity and how MAS5 responded to the financial difficulty Mr B and Ms C were in before this date were out of time. I did not make a finding on the transfer of the mortgage as Ms C asked to withdraw this point. And I set out that this service did have the power to consider the other

complaint points raised by Mr B and Ms C.

I then issued a provisional decision on the parts of Mr B and Ms C's complaint that had been brought in time. In summary I concluded:

- It was both understandable and reasonable that MAS5 had been unable to provide call recordings that had taken place more than three-years before the DSAR was made and its inability to provide documents that pre-dated 2010 was also fair. So, I did not uphold the complaint point that MAS5 had acted unfairly in not fully complying with the DSAR.
- I was not persuaded that the only reason Mr B and Ms C needed to rely on the SMI loan was because of MAS5 charging them a higher interest rate than provided for in the terms and conditions of the mortgage. While it had been found in a separate case that MAS5 had overcharged Mr B and Ms C interest by 1.25%, Mr B and Ms C had been in and out of arrears since 2008, including periods in 2016 where no monthly payments were made to the account. So, I wasn't persuaded the only reason they claimed SMI was because of their mortgage interest being 1.25% higher than it should have been.
- I was not persuaded MAS5's suggestions of an AVS were inappropriate given the long-term arrears on the account and the potential erosion of equity in the property.
- I did, however, set out an intention to uphold the complaint based on what appeared to be an internal decision by MAS5 to decline to reduce Mr B and Ms C's interest rate following an affordability assessment in August 2021.
- I also set out my concerns with how MAS5 engaged with Ms C during the period of financial difficulties. I wasn't persuaded sending vulnerable consumers letters saying their payment plan had ended early, making additional calls and asking Ms C to go through repeat income and expenditure assessments mid-way through an agreed plan was appropriate given MAS5 was on notice that Ms C was intending to make overpayments. So, I set out my intentions to direct MAS5 to pay Mr B and Ms C compensation in recognition of the distress caused for this element of their complaint.
- I upheld the complaint point that MAS5 had unfairly declined Mr B and Ms C's request to have a second charge registered against the property. The charge in question related to a council grant to improve the living standards of Mr B and Ms C given Mr B's health. It did not require any monthly repayments, nor was it interest bearing. So, I did not agree with MAS5's assessment that allowing such a charge to be registered would further impact Mr B and Ms C's financial difficulties. Nor did I agree with its suggestion that it would erode its equity position.

MAS5 responded to my provisional decision and agreed with the majority of my findings. However, it explained that while the contact notes on the account appeared to suggest it was MAS5 who assessed and declined Mr B and Ms C's request for an interest rate reduction in 2021, this was actually carried out by a separate business within the same group. And as such, should not be viewed as a forbearance measure that MAS5 declined to implement.

Ms C replied at length to my provisional decision. In addition to accepting the decision, Ms C said:

- They rejected the decision on their linked case which found that the interest rate should have been 1.25% lower than it was. So, they consider the finding that they

would've still needed to rely on the SMI loan to be conjecture and have asked that I withdraw this point.

- MAS5 promoted the AVS option for the most frivolous of reasons in 2017 and 2018 and this practice has continued.
- They were unaware that they were being considered for a lower interest rate in 2021. They maintain that any suggestion they could not afford the switch to be unreasonable given the amount due under the lower rate was less than what they were and had been paying to MAS5 for some time.
- Mr B and Ms C's local council are working with her to lift the restriction on their ability to sell the property without incurring a demand to repay the grant. So, she suggests that a direction that MAS5 honour any request for payment from the council is no longer needed.

Following the responses to my provisional decision I shared MAS5's response with Mr B and Ms C and set out that, as it had now been identified that the decision to decline their request to lower their interest rate in 2021 was made by another business and not MAS5, I was unable to hold MAS5 responsible for this decision. And as such, this means I would no longer be recommending that MAS5 re-work the mortgage account as if the concessionary rate had been applied in August 2021.

In response, Ms C said she has no evidence that substantiates that an inter-bank mortgage application was made by MAS5 on their behalf in 2021. She's highlighted that when they applied to another bank within the group in 2023, they needed to be involved extensively to go through the application process. Ms C suggests that MAS5 would've needed her permission to contact another company within the group which they did not provide.

She has provided extracts from call notes at the time which show MAS5 referring to the 'lifeboat mortgage options' not an inter-group switch. And that they were told more than once that while they were in arrears, they could not be considered for any kind of mortgage switch. In addition, Ms C has said MAS5's investor agreements prevented the group from offering mortgages to borrowers securitised with a particular investor, as they were at the time. So, she suggests that MAS5's explanation that the assessment in August 2021 was an inter-bank referral is unrealistic.

Ms C has also said that even if it is correct that they were assessed for an inter-bank mortgage in 2021, why were no other forms of forbearance offered when they were declined. Especially given MAS5 knew all their income was going toward their mortgage payments, including Mr B's ill-health benefits. She has also queried why the concession made in 2023 to reduce their payments to £700 was not offered sooner and suggest that this shows MAS5 could have done something in 2021 had it wanted to.

As both parties have responded to the provisional decision and as the submissions have been shared with Mr B and Ms C along with my intention to amend one of my provisional recommendations, it is now appropriate that I move to final decision on this complaint.

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 have read and considered all the submissions made by the parties to this complaint in full. But I will keep my comments to what I think is relevant to determine this case. If I don't

comment on any specific point, it is not because I've not considered it but because I don't think I need to comment on it to reach the right outcome.

It should also be noted that Mr B and Ms C had another complaint with this Service about the same respondent business. But I will not be commenting further on the complaint points that fall under that case here or their subsequent decision not to accept the redress awarded on that complaint.

The complaint that falls within this case is made up of several individual complaint points. I appreciate that for Mr B and Ms C, all the events are interconnected and speak to their experience of being customers of MAS5. But for the purposes of this decision, I will deal with each point in turn.

MAS5's response to the DSAR

Ms C says there was information missing when she received MAS5's response to her DSAR. Specifically, recording of calls and letters sent before 2010.

The calls Ms C is referring to took place more than three years before the DSAR was submitted. I set out in my provisional decision that relevant mortgage regulation only requires MAS5 to retain call recordings for three years. As such, given the length of time between the calls taking place and the DSAR being made, I was satisfied it was reasonable that MAS5 no longer held the calls and was therefore unable to send them with its response to the DSAR.

I made the same finding regarding the documentation Ms C was seeking that was produced prior to 2010. MAS5 had explained that due to IT systems change, it no longer has certain types of correspondence that pre-date 2010.

I set out that a business is not required to hold records indefinitely and so the absence of documentation or other records which were originally produced more than ten years ago is not necessarily suggestive of wrongdoing or of MAS5 otherwise treating Mr B and Ms C unfairly in its response to the DSAR.

Having reviewed this element of the complaint again and as neither party have provided any further comments or evidence on this point, I see no reason to depart from my provisional conclusions. So, it follows that I don't uphold this element of Mr B and Ms C's complaint.

Mr B and Ms C's need to rely on the SMI loan

Mr B and Ms C's complaint on this point is that, but for MAS5 charging them an unfairly high rate of interest, they would not have needed the SMI loan.

This complaint point seems to be driven by Ms C's conclusion that the interest rate they were charged was inflated by over 3%. However, this was not found to be the case on their related complaint, instead it was found that the rate of interest on Mr B and Ms C's mortgage was 1.25% higher than it ought to have been.

I set out in my provisional decision that taking into account the financial difficulties Mr B and Ms C have experienced over the years, I was not persuaded that the only reason they claimed SMI was because of their mortgage interest rate being 1.25% higher than it should have been. They had been in arrears on and off with their mortgage since 2008, including periods in 2016 when no monthly payments were made to the account. So, I thought it likely they would always have taken up the SMI offering.

In response, Ms C has said she and Mr B have rejected the finding that the interest rate was only 1.25% higher and as such, my comments on this point are conjecture.

I understand Mr B and Ms C feel very strongly that the interest rate on their mortgage was significantly higher than they believe it should be. But they have asked to withdraw the point that their SVR was unfairly high from any further consideration by our Service.

With that in mind and based on this Service having already found that the interest rate charged was inflated by 1.25% not 3%, I am not persuaded that their reliance on the SMI loan only occurred due to MAS5's error in overcharging interest by 1.25%. So I do not uphold this element of their complaint.

MAS5's arrears collections activity

Ms C says MAS5's arrears collection activity has been unlawful and not in line with the FCA's regulations, including its attempts to pressure them into an AVS on more than one occasion. I set out in my decision on the scope of this Service's jurisdiction that I can only consider this part of Mr B and Ms C's complaint from December 2016 onwards – all matters before that date having been referred out of time.

In Ms C's response to my provisional decision, she sets out that MAS5's continued suggestions of AVS post 2016 are for frivolous reasons and are being used as a first resort option instead of last.

I can understand why Mr B and Ms C think MAS5's suggestion of AVS was inappropriate given Mr B's health at the time. But, while I can appreciate such an approach may well have caused Mr B distress, I'm not persuaded it was inappropriate for MAS5 to want to explore this option given the long-term arrears on the account and the potential erosion of equity in the property. I also disagree that MAS5 suggested this option too early rather than as a last resort.

The account had been in arrears since 2008. And while I appreciate Ms C has made submissions about Mr B's recovery and the hope that he will be able to resume work, their financial circumstances and Mr B's health had not improved for many years. As such, as a responsible lender, it was appropriate for MAS5 to explore whether the loan had become unsustainable for them such that they ought to consider selling the property in order to release themselves from the mortgage. So, I do not uphold this element of Mr B and Ms C's complaint.

Turning to the other measures of forbearance explored, Ms C asked MAS5 to reduce her interest rate in August 2021. In response, the contact notes on the mortgage at the time record the account being passed for an assessment for a 'lifeboat product variation.' The assessment was undertaken, and it was determined that Mr B and Ms C could not afford the product which when stress tested would result in monthly payments of £774.85. As such, Ms C's request for a lower interest rate was declined.

I initially upheld the complaint on this basis as I could see that Mr B and Ms C had been paying considerably more each month towards their mortgage than the proposed monthly payment I have quoted above. So, I was not persuaded it was reasonable of MAS5 or in Mr B and Ms C's best interests to decline their request for a lower interest rate as a method of forbearance on the basis that a payment which was several hundred pounds per month cheaper than what they were and had been paying for some time was unaffordable for them.

However, in response to my provisional finding on this point, MAS5 has responded to say it did not offer a 'lifeboat' product and the assessment in August 2021 was in fact an inter-bank

mortgage application. It had proactively referred the account to another bank within the group in light of Mr B and Ms C's financial difficulty and used the information it had at the time with regard to their income and expenditure. Its explained this is because it wasn't able to offer them a rate reduction itself due to being a closed-book lender.

Given this new information, I am no longer able to recommend that MAS5 re-work the mortgage account as if the lower rate had been applied in August 2021. I realise this will come as a disappointment to Mr B and Ms C, but I hope my explanation helps them to understand why I have reached this conclusion.

This complaint is against MAS5 which is a separate legal entity from other banks within the wider group. As such, I am only able to investigate and ultimately decide this complaint based on the acts or omissions of MAS5 itself – not the actions of other banks within the group. This means that as the decision not to offer the lower rate to Mr B and Ms C was made by a different business and not MAS5, I am unable to find that MAS5 is at fault for this decision. It was not the MAS5 who chose to decline the proposal to move Mr B and Ms C onto a lower rate at this time. Instead, MAS5's actions were limited to making the referral in an effort to help Mr B and Ms C with their financial difficulties.

Ms C has provided several submissions on this point which I have summarised at the start of this decision. And while I have considered these carefully, they do not lead me to uphold the case on this point. While Ms C may find MAS5's explanation to be unrealistic and not supported by how she understood her mortgage to be held, that does not change that it was not MAS5 who made the decision to decline the proposal to move to a lower interest rate. And on that basis alone, I am unable to uphold this element of the complaint.

Ms C has also queried why, if it was unable to offer a rate reduction in August 2021, MAS5 didn't explore other methods of forbearance.

Under the relevant rules, MAS5 is required to treat Mr B and Ms C fairly while their mortgage is in arrears. The rules say that lenders should consider, amongst other things, extending the term, changing the repayment type, deferring interest or payment and capitalising arrears. Not all of these will be appropriate in every case – and none will be appropriate in some cases – but they should be considered.

If MAS5 capitalised the arrears it would mean that the arrears are added to the balance of the mortgage and the payments recalculated over the remaining term. That would result in significantly higher repayments for Mr B and Ms C. Given they have consistently struggled to meet their existing contractual monthly repayments, I am not persuaded this would have been in their best interests. The same outcome would have occurred had MAS5 changed the mortgage type to capital and repayment, and this was explored in August 2021.

Similarly, extending the term of Mr B and Ms C's mortgage would not reduce the amount of their contractual monthly repayment as this is an interest only mortgage, so this would not have helped to make the mortgage more affordable for them or enabled them to clear their arrears more quickly.

In terms of deferring payments, this is typically used for short periods of financial difficulty to give a consumer some breathing space while their circumstances stabilise and improve. But it has the negative consequence of increasing their overall indebtedness of the consumer and therefore the monthly payment. So, I agree that such a measure would not have assisted Mr B or Ms C in clearing their arrears.

I do, however, maintain my concerns as to how MAS5 engaged with Ms C across the period that falls in time.

MAS5 says it kept in regular contact with Ms C and agreed to multiple payment plans and a payment holiday. I set out in my provisional decision that having reviewed the mortgage contact notes I agreed that there was a significant amount of contact between the parties – however I was not persuaded all the contact was positive and appropriate.

It is accepted by both sides that numerous payment plans were set up on this account and that several of them failed/completed early each time Ms C made an overpayment. I can understand why this may be appropriate for some customers. An overpayment suggests that the consumers may well be able to routinely contribute more to their arrears than they had previously agreed so it would be reasonable to undertake a new income and expenditure assessment to determine if the consumer could clear their arrears sooner.

I was not, however, persuaded that was the case here. In most conversations with MAS5, Ms C either says she will try to overpay each week or is told this would be a good idea to ensure the arrears clear by the end of the term and she reduce the impact the arrears were having on the account. And in some cases, the ‘overpayment’ was simply Ms C rounding up the payment to a round number.

In such a scenario, I was not persuaded sending vulnerable consumers letters stating that their payment plan had come to an end early, making additional calls and asking Ms C to go through repeat income and expenditure assessments mid-way through a pre-agreed plan was appropriate. Given MAS5 was well versed in how such contact could trigger Mr B’s mental health, how open and willing Ms C has been over the years to keep it updated with their financial circumstances, her consistent ability to meet their monthly mortgage payment and a contribution to the arrears since 2018, I was of the opinion this led to Mr B and Ms C being unfairly inconvenienced and caused them unwarranted distress at what was already a very difficult time. So, I recommended MAS5 pay Mr B and Ms C £300 in recognition of the distress caused on this element of their complaint.

Having considered this element of the complaint in full again and in the absence of any further comments from the parties, I see no reason to depart from my provisional conclusions here. So, it follows that I uphold this element of Mr B and Ms C’s complaint and direct MAS5 to compensate them as set out below.

MAS5’s handling and ultimate decline of Mr B and Ms C’s request for permission to allow a second charge to be added to their property

I have included an extract from my provisional decision on this element of the complaint which forms part of my final decision:

“The second charge in question was for a local council home improvement grant. It was intended to replace the single glazing at Mr B and Ms C’s property which would help with heat insulation and noise intrusion.

Ms C told us that due to the arrears and the rate of interest they were paying to MAS5 on the mortgage (as well as their other outgoings) they could not afford to put the heating on and even if they did, the single glazing on their listed property meant the house was always cold in winter and that ice would form on the inside of their windows which negatively impacted their physical and mental health.

She also told us that one of the ways Mr B’s mental health impacts him is that loud or constant noise can cause him to become very agitated and detrimentally impacts his mental health, worsening his condition. The single glazing at the property did not insulate them from any neighbourly or road noise and this was a daily struggle for Mr B.

The council had approved the grant based on Mr B and Ms C's circumstances and approached MAS5 as the first charge lender for consent to secure a second charge against the property. It explained the grant was non-interest bearing, did not require monthly repayments and would not need to be repaid at all if Mr B and Ms C kept the property for four years following the latest instalment of the grant.

Upon receiving the request, MAS5 had an obligation to give it fair consideration. From reviewing the evidence on this file again, I am not persuaded it did this.

I can see the request was first sent to MAS5 in February 2017 and that it misplaced this and did not start to re-engage with the matter until both the council and Ms C began routinely chasing and resending the original documentation – this led to its decision on whether to grant the permission taking around five months. I can see that when it did re-start the process, it was able to give an answer to both the council and Ms C within a month. So, it follows it could have done this in March 2017 had it not misplaced the paperwork. Given the delays and how frequently Ms C felt the need to reach out to MAS5 and chase progress, coupled with the existing vulnerability of the consumers and the reason for the grant, I think MAS5 caused avoidable distress and inconvenience in not dealing with the request within a reasonable timeframe of first receiving it in February 2017.

Turning to MAS5's decision to withhold permission. Its notes from the time show it was concerned by the level of arrears on the mortgage account and the large amount of unsecured debts. As such, it had real concerns as to Mr B and Ms C being able to get their mortgage back on track within its pre-agreed term and the further erosion of equity within the property – both of which would increase MAS5's exposure to risk.

It said it would be open to reconsidering the request once Mr B and Ms C had been arrears free for at least 12 months – which is in line with its usual lending criteria.

MAS5's policy on permitting second charge lending while a consumer is in arrears may be fair in principle. But it must apply this principle fairly to the individual circumstances of the request and the consumers.

In this case, the second charge was for a council grant. It was non-interest bearing and did not require Mr B or Ms C to make any monthly repayments – so it would not impact their ability to afford their first charge mortgage with MAS5 or their ability to maintain their other commitments. In addition, it was to replace their single glazed sash windows which in turn would help to reduce any heating costs.

MAS5 raised concerns about the grant contributing to an eroding equity position which would therefore impact its security. But MAS5 is the first charge lender so is first in line to receive the proceeds from the sale of the property to clear the full mortgage balance and any arrears, fees and charges. So, I am not persuaded by the argument that giving permission for the second charge would have impacted MAS5's security as it has suggested.

Looking at this request holistically, MAS5 has two vulnerable consumers living in a listed building with poor noise and heat insulation. The local council has recognised that the property and consumers would benefit from a home improvement grant which does not require monthly payment and would require nil payment if the property remained in Mr B and Ms C's name for more than four years.

One of those consumers suffers adverse reactions to noise intrusion which the replacement of the windows would have assisted. In addition, carrying out remedial works and improving glazing as well as the insulation of the property would likely have assisted any future sale.

Taking this into account against the purpose of MAS5's policy on such matters, I do not think it acted reasonably when it chose to withhold permission. And I'm satisfied its actions significantly contributed to Mr B experiencing pain and suffering in his own home and the extreme distress Ms C was going through at the time – of which it was well aware.

As a result of its actions, a further three years passed of Mr B and Ms C living in a property that required adaptation to meet their needs and extended pain and suffering which could have been notably reduced. Mr B and Ms C were able to secure the grant in 2020 but this delay means they will remain liable to repay the grant until 2024 and the cost of the works (and therefore the grant) has doubled.

Had MAS5 approved the request in 2017, it follows that Mr B and Ms C would've been released from any requirement to repay the grant from the sale of the property by 2022 and the amount in question at that date was around £2,600.40. By preventing Mr B and Ms C from accessing this grant when they first asked for it, MAS5's actions have left Mr B and Ms C potentially liable for a debt to the council of over £5,000 if their property was to be sold before late 2024.

In light of this, I intend to uphold this element of Mr B and Ms C's complaint and direct MAS5 to pay Mr B and Ms C £3,500 in recognition of the pain and suffering its actions caused. I'm satisfied this award is fair when taking into account the length of the delay caused by MAS5 both initially and as a result of its refusal in addition to the impact this would have had on the very individual circumstances of these consumers.

It should also take steps to cover the cost of the current grant should the property be sold before the repayment period expires in 2024. Mr B and Ms C should provide MAS5 with evidence of how much they are being asked to repay when the time comes."

In response to my provisional conclusions Ms C said she was in discussion with the council to remove any requirement to pay upon sale of the property and they were confident this could be achieved by this summer. I appreciate Ms C providing us with this information, but I still intend to issue a direction that MAS5 honour the cost of the grant should it be called upon by the council. This will prevent the need for Mr B and Ms C to pursue this at a later date should the council not remove the obligation to repay the grant before the property is sold.

MAS5 said it agreed with my conclusions on this point but did not think it was necessary to give a solicitor's undertaking that it would cover any demand for payment from the council in relation to this grant and thinks its agreement to my decision should be sufficient. I have taken this into account in my direction below.

As neither party have disagreed with my initial conclusions on this point or provided any further information or evidence as to why I should not uphold this element of the complaint, I see no reason to depart from my provisional conclusion. So, it follows, that I uphold this element of Mr B and Ms C's complaint and direct MAS5 to compensate them as set out below.

Putting things right

To put things right MAS5 should:

- Pay Mr B and Ms C a total of £3,800 in compensation for the distress, inconvenience, pain and suffering caused by both its handling of their payment arrangements and the request for a second charge to be placed on the property.

- Commit to cover the cost of the council grant should the property be sold before the repayment period expires in late 2024. Mr B and Ms C should provide MAS5 with the necessary documentary evidence to support the payment due – should this come to fruition. It should provide confirmation of its intention to cover any request to repay the grant to Mr B and Ms C in writing and ensure the records on Mr B and Ms C's account reflect this obligation.

My final decision

For the reasons set out above, I uphold this complaint in part against Mortgage Agency Services Number Five Limited and direct it to compensate Mr B and Ms C as I have detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms C to accept or reject my decision before 23 October 2024.

Lucy Wilson
Ombudsman