

The complaint

Miss B complains she lost the chance to move and her plans for the future were adversely affected because Mortgage Advice Bureau Limited overlooked submitting her Help to Buy application in time.

What happened

In around February 2020 Miss B approached Mortgage Advice Bureau Limited (MAB) about funding to buy a new property. In November 2020 MAB discussed Miss B's mortgage needs with her. They advised Miss B on porting her mortgage and borrowing an additional amount from her existing lender. And they completed an application on Miss B's behalf to borrow the further funds she needed under the government's Help to Buy (HTB) scheme.

Shortly before Miss B was due to exchange contracts in January 2021, MAB realised they hadn't submitted the HTB application. And their efforts to get it through late as an exception failed. Since the HTB scheme had closed to applicants like Miss B at the end of 2020, and she wasn't able to move without financial help from the scheme, she couldn't move at all.

MAB acknowledged things had gone wrong. They apologised and discussed with Miss B how they could compensate her. MAB initially offered Miss B £550. They increased this to £2,188 in their final response to her complaint, and later made an offer of £5,000 in full and final settlement. None of the offers was acceptable to Miss B. She felt a payment of half the advance she would have had from the HTB scheme - £26,000 – was fair to resolve her complaint.

Our investigator considered the losses Miss B said she'd incurred and came to the view the offer to pay £5,000 was fair and reasonable in all the circumstances. Miss B disagreed and appointed solicitors to represent her in relation to her complaint going forward. They say a fair amount to put things right for Miss B is around £18,000. Since Miss B didn't accept our investigator's view, her complaint was been passed to me to review. I recently issued a provisional decision, an extract of which follows:

What I've provisionally 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.

Miss B's solicitors have raised arguments MAB haven't responded to and my current view is different in some regards to the conclusions reached by our investigator. So, I'm issuing a provisional decision to allow the parties to make further comments before I reach my final decision.

The parties agree MAB made a mistake in failing to submit Miss B's application under the HTB scheme and the result was she couldn't go ahead with the sale of her existing

property and the purchase of the new one. So, there's no need for me to discuss whether MAB were at fault – they've accepted they were.

I understand it will have been very disappointing for Miss B that her move fell through. She's explained that since she's no longer able to access the HTB scheme she can't reorganise her finances as she'd planned to. Her hopes of moving up the property ladder have been affected. And her plan to move to another area to bring up and educate her daughter can't now go ahead. I can also understand Miss B found it frustrating that MAB didn't reply to her correspondence following their offer to pay £5,000. Up to that point, from what I've seen, MAB tried to resolve things in an amicable way. But by then Miss B's complaint was with this service, so I wouldn't expect MAB to continue corresponding with her direct.

What I need to consider is how MAB should put things right. MAB approached this by looking at the position Miss B would have been in if her application hadn't started. And initially they offered to pay some of the costs she incurred which they considered weren't a direct consequence of what happened, before offering to settle by paying a lump sum in full and final settlement.

I think the right approach is to think about the position Miss B would have been in if things had gone the way they should. I can't be certain the sale and purchase transactions would have completed. But the lender had approved the mortgage subject to the HTB scheme providing funds, contracts were due to be exchanged shortly and MAB seem to accept the transaction would have gone ahead. On balance, it seems to me more likely than not that Miss B's sale and purchase would have completed.

Since the opportunity for Miss B to obtain help through the HTB scheme was no longer available by the time MAB realised its mistake, there's no possibility of asking them to arrange for the application to go ahead and to meet any additional costs that might have been incurred due to delay, for example. So I need to think about the costs Miss B wasted as a result of the sale and purchase transactions not going ahead, any foreseeable losses she incurred as a direct consequence of what happened and how she can be compensated for the distress and inconvenience she suffered.

Miss B identified several losses in her correspondence with MAB. Some, but not all those losses have been put forward by her solicitors. To be sure nothing Miss B is arguing for is overlooked, I'll consider each loss separately using headings to make things easier to follow. If I haven't mentioned something, the parties have the chance to let me know by responding to this provisional decision.

Reservation fee for the property Miss B was purchasing

I understand Miss B paid a reservation fee of £500 for the property she'd planned to buy. I think this has been refunded to her. If it hasn't, I think it's a loss that flows directly from MAB's mistake and could be foreseen; and they should pay that amount to Miss B if she provides evidence she made the payment.

25% payment Miss B made towards extras on the property she was purchasing

I understand Miss B made a payment to the seller towards additional items for the new property. Again, if the payment hasn't been refunded, I think MAB should pay Miss B the amount she paid if she provides evidence she made the payment. It too is a loss which arises directly from MAB's mistake and could be foreseen.

Legal fees

I understand Miss B's conveyancing solicitors refunded at least some of the fees she'd paid towards the transactions. MAB should pay Miss B the balance of any legal fees that haven't been refunded and Miss B can evidence she paid. Again, they were lost as a direct consequence of the failed transactions and were foreseeable.

Stamp duty

Miss B calculated she would have saved stamp duty of around £3,000 because of the government freeze on stamp duty payments at the time her purchase was due to take place. Miss B has said she doesn't now intend to go ahead and move. If that's right, she won't incur stamp duty so it's not fair to ask MAB to pay what she would have saved – that would amount to a windfall.

Saving on estate agents fees

I understand if the transactions had gone ahead, Miss B's estate agents' fees of around £1,500 would have been paid on her behalf. Since the transactions didn't go ahead, Miss B didn't become liable to pay, or in a position to save, any such fees. And since she isn't currently planning to move, she hasn't lost out by having to pay any estate agents fees now. So, it wouldn't be fair to ask MAB to make any payment.

MAB said they'd consider reimbursing any estate agents' fees Miss B did pay up to January 2021, presumably on the basis she knew then the transaction had failed and could have ended the estate agents' instruction. I think that's fair since any such fees would have been wasted when the transaction failed. MAB should pay any fees Miss B can evidence she paid for services the estate agents provided up to 14 January 2021 when Miss B found out what had happened.

Items bought for the new property

Miss B mentioned she'd spent money on items she planned to use in the new property but couldn't use in her existing property due to lack of space or because they weren't suitable. She thought she'd be able to get a refund on those.

MAB offered to reimburse anything she couldn't get refunded if Miss B provided evidence of that. I think it was reasonable and not unexpected for Miss B to make some preparations for furnishing her new home given she was close to exchanging contracts, even though there was no guarantee the transactions would complete. I think MAB's offer is fair in the circumstances.

Dining room

I understand Miss B's new property would have had a study where she could work from home. I accept that would have been helpful given her change in working arrangements due to the coronavirus pandemic. But, from what she's told us, I don't think it was Miss B's main motivation for moving.

Since Miss B had to stay in her existing property, she planned to adapt her dining room to accommodate home working. I acknowledge MAB offered to reimburse Miss B the £599 she planned to spend on a smaller dining table and new lighting if she provided evidence she'd incurred those costs.

Miss B was paying a higher price for extra space in the new property. So, I don't think the fact she couldn't move and decided to make some changes in her existing property led to additional cost. But I can understand it was inconvenient. I think it's the inconvenience that should be considered here, not the cost of the changes she planned – and I'll refer to that later.

Day off work

Miss B took time off work following the collapse of the transactions because she was understandably upset by what had happened. I acknowledge MAB offered to pay Miss B the equivalent of a day's holiday pay of £196.23. But I think the time Miss B took as holiday from work should be reflected in an award for the overall distress and inconvenience she suffered. So, I'll refer to that later as well.

Interest on a loan and credit card

Miss B had an unsecured loan she'd taken out to carry out some works to her property. She says she planned to repay the loan and a credit card balance from the proceeds of sale from her existing property.

MAB have argued:

- *Miss B's costs associated with the loan and credit card weren't connected to the transactions and would still have been there if Miss B's application hadn't concluded for any other reason.*
- *Since Miss B's existing contractual monthly mortgage payment (CMP) was £290 a month less than the new CMP would have been, she's no worse off making the existing lower CMP and the loan payments in addition.*
- *Miss B could remortgage or refinance her unsecured debt using equity in her existing property.*
- *Miss B had secured a 0% interest rate deal on her credit card.*

MAB initially offered to pay Miss B three months' interest on the loan to give her time to remortgage or refinance it, which they calculated as £265.75.

Miss B says by selling the existing house she would have been able to pay off the credit card balance and loan which cost her more than the increased amount she would have paid towards her new mortgage. She said paying towards a mortgage on a new house was an investment opportunity that was missed as a result of the transactions not going through. And she says she can't make additional payments to her existing mortgage as she is still paying off the loan and credit card.

In January 2021 Miss B owed around £17,675 on the loan and around £4,200 on her credit card.

Based on the available evidence, I'm persuaded Miss B planned to repay the loan once the transactions had completed. The fact find completed by MAB in November 2020 makes clear she intended to pay off the loan and MAB were aware of that. I think it was a direct consequence of the transactions failing that she couldn't pay off the loan. And I think it was foreseeable given it was part of Miss B's plans for moving.

Miss B's solicitors argue since she couldn't move and repay the loan she's continued to pay a high rate of interest and should be compensated for that. They calculate she's owed £4,530.92 as follows:

“The interest @ 9.9% [APR] on £17,675.00 amounts to £1,749.00. This would have been the correct figure had she paid off the loan when she was due to sell her house. If our client was to pay off the loan now, she could save an additional £2,781.00 in interest so the possible saving of interest on the loan has been calculated as follows:

$$\text{£1,749.00} + \text{£2,781.00} = \text{£4,530.82.}”$$

I don’t understand their calculation or reasoning and would ask them to clarify and provide supporting evidence for their figures.

I’m not currently persuaded Miss B has suffered a loss in relation to the loan. Whilst the fact find indicates she wasn’t planning to repay the loan from the new mortgage, she was essentially transferring an unsecured debt with a high interest rate of 9.9% to her new mortgage. That’s because she was having to borrow more than she would otherwise have needed to borrow so she could pay the loan off using equity from her sale. The loan would have been consolidated into her new mortgage and become a secured debt with a lower interest rate over a longer term. It’s not clear she would have paid less interest overall. But I’ll consider any further comments Miss B would like to make about that.

Miss B’s solicitors say she would also have paid the balance owing on her credit card of £4,200 from the proceeds of sale of her existing property; at the time she had a 0% interest period on her credit card and following a balance transfer still benefited from 0% interest as at October 2021; but she still has to pay the balance and her credit rating is affected. The solicitors say this impacts her ability to get a favourable mortgage deal. They think Miss B should be paid half of what she owes on her credit card by way of compensation – around £2,100. Again, I’d ask Miss B’s solicitors to clarify their reasoning and provide evidence to support this figure.

I’m not currently persuaded Miss B would have repaid the credit card balance. The fact find suggests she didn’t intend to pay off the credit card or the other unsecured borrowing, besides the loan, that she had. Miss B’s been benefiting from 0% interest terms which allow her to repay the balance over time without incurring additional costs. So, consolidating the credit card debt into her new mortgage wouldn’t have saved her money. And I haven’t seen any documentary evidence Miss B’s credit file is impacted purely because of her credit card balance.

Even if Miss B had paid off the credit card loan, I’m not currently persuaded she would have paid less interest overall for the reasons I’ve explained in relation to the loan.

Increase in home insurance costs

The loan Miss B took out was for works she had to carry out to the existing property because of suspected subsidence. Her insurance premiums increased following the insurance claim. And she says she’s no longer able to get standard buildings and contents insurance despite subsidence being ruled out following the repairs and monitoring. Miss B says if the sale of the property had gone ahead, she wouldn’t have had to carry on paying insurance premiums at such a high rate.

Miss B’s solicitors say since she can’t go ahead with selling now because of MAB’s negligence, it’s fair for MAB to pay the difference between her previous premiums and the higher premiums for a period of five years – a sum of £2,315.40. They don’t explain why.

MAB said the buildings insurance had increased due to potential subsidence and the costs would still have been payable if the transactions hadn't completed for any other reason. As a gesture of goodwill MAB initially offered to pay the difference between her insurance premiums before the claim and afterwards for 12 months - £463 – if she provided proof of those premiums.

I think it's reasonable to say Miss B continues to pay buildings insurance premiums on her existing property because the sale didn't go through. It's unfortunate they're higher than Miss B would like to pay although the insurance position is surprising if subsidence was ruled out as Miss B says.

However, I don't think MAB should pay for the additional insurance costs. I don't think they were in the reasonable contemplation of the parties when MAB was advising Miss B on her mortgage and arranging the HTB loan. So, I think they are too remote from what happened and it wouldn't be fair to ask MAB to pay them.

Pension contributions

Ms B paused her pension payments when she was furloughed due to the coronavirus pandemic. The parties agree she had to start making payments again to satisfy the lender's requirements, as she was planning to borrow into her retirement. If Miss B suffered any loss because of making the pension payments and the transaction failing due to MAB's mistake, I think it was foreseeable.

Miss B says, but for the lender's requirements, she would have chosen not to make any pension payments until the performance of her pension funds, that had been adversely affected by the coronavirus pandemic, had improved.

MAB argue making the pension payments benefited Miss B. But they initially offered to pay her what she'd paid for December and January on the basis she could have cancelled her payments again from February onwards. They proposed £163.90 on the basis that was the figure she'd quoted, although I understand £163.90 to be the monthly pension payment figure.

Miss B's solicitors say she lost the chance to use money she spent on pension payments to reduce the balance on her loan or credit card, or towards her monthly expenditure. They say MAB should pay Miss B £983.40, which they calculate to be 6 months' worth of pension contributions, although they don't explain the reason why that's appropriate.

I don't think Miss B's lost out financially by making payments into her pension fund. The fund may not have been performing well at the time she made the payments. But she will benefit from the payments when her pension fund generates a lump sum and/or income based on how those funds are performing when she retires.

I agree Miss B lost the chance to use the pension payment money for other things for a limited period. It's possible Miss B could have saved some interest on her loan or other unsecured debts if she'd reduced the balances. But I haven't seen any evidence she was making payments to do that before she started paying into her pension again, so I'm not currently persuaded she would have done. I think the appropriate way of addressing this is as part of an award for inconvenience.

Stress and anxiety and loss of opportunity

Miss B's explained the significant impact the events have had on her and her solicitors have recently summarised these as follows:

- Miss B was greatly distressed by losing the chance to move. She lost the chance to benefit from the HTB scheme and will never have the same opportunity in the future. Due to MAB's mistake Miss B wasn't able to buy a much bigger house for herself and her daughter which they say would considerably have improved their lifestyle. The new house would have provided more privacy for Miss B's daughter as she was growing up.*
- The house Miss B was buying was in the catchment area of the school she wanted her daughter to go to but isn't now an option for her.*
- Miss B may not be able to buy a similar house in the future due to her age and current financial situation. So it's possible Miss B will never be able to buy a house equivalent to the one she would have bought but for MAB's mistake.*
- Miss B is suffering a great deal of stress as a result of the situation and realises she may have lost her chance to move up the property ladder.*

I don't agree it's certain Miss B will never be able to move or benefit from the type of opportunity the HTB scheme gave her in 2020, and I hope she gets another chance. But I accept Miss B's been significantly impacted by MAB's mistake and has suffered a great deal of distress and inconvenience as a result.

Miss B was inconvenienced by the transactions falling through. She had to deal with recovering money she'd paid out to the sellers and her solicitors as well as returning items she'd bought. She needed to make changes to her existing property to accommodate home working. And she lost the chance to use money she paid into her pension for other things. Miss B was understandably upset when she found out what had happened and took a day's leave to, in her words, compose herself, which she would otherwise have used for rest and relaxation.

Significantly, Miss B's been unable to take forward the plans she had for improving her and her daughter's overall situation. I think it will take some time for Miss B to come to terms with what's happened.

Bearing everything in mind, I think it's fair that MAB pays Miss B compensation of £2,000.

My provisional decision

I provisionally direct Mortgage Advice Bureau Limited to pay to Miss B:

- 1) To the extent they haven't already been reimbursed, and she provides evidence of payment, the reservation fee of £500, extras she paid for the new property and legal costs associated with the transactions;*
- 2) Any estate agents' fees Miss B paid up to 14 January 2021;*
- 3) Simple interest on the amounts in 1) and 2) at the rate of 8% a year from 14 January 2021 until payment;*
- 4) Compensation of £2,000 for distress and inconvenience*

If Mortgage Advice Bureau Limited considers that it's required by HM Revenue & Customs to deduct income tax from the interest, they should tell Miss B how much they've taken off. They should also give her a certificate showing this she can reclaim the tax from HM Revenue & Customs if appropriate.

Developments

MAB haven't commented on my provisional decision. Miss B has made several points through her solicitors, which I'll address.

As a general point, my decision isn't an "offer" to Miss B – it's my conclusion about what's fair and reasonable to put right the impact of MAB's mistake on Miss B. It may not reflect MAB's own response to Miss B's complaint. There's no obligation on Miss B to accept my decision. And the parties are free to agree terms of settlement if they wish to do so.

I'll comment by reference to the headings which Miss B's solicitors have used in responding to my provisional decision.

Dining room

Miss B says the changes she had to make to her dining room resulted from MAB's negligence and not being able to move properties. In fact, they were needed to accommodate home working. She spent money on items to adapt her existing property when she couldn't move and use the extra space in the property she'd hoped to buy.

Having considered Miss B's arguments, I don't think she's incurred a loss that MAB caused, or that she's incurred a loss at all. Although she had to find money to make a one-off payment for the items she required, she would have paid a higher price for extra space in the new property. And she has ongoing use of the items she bought.

I still think it's right to consider the inconvenience of adapting her existing property as part of the distress and inconvenience Miss B suffered as I said in my provisional decision.

Day off work

Miss B argues this aspect of her complaint should be treated separately from the issue of distress and inconvenience since MAB offered to pay her a day's holiday pay. She says fact that she took the day off due to distress is irrelevant.

Although Miss B could have used the day for holiday rather than because of how she was feeling, I'm not aware Miss B suffered a financial loss as a result of taking a day's leave, even though MAB offered to compensate her for it. This service doesn't generally make awards based on rates of pay. I still think it's appropriate to consider this issue as part of an overall award for distress and inconvenience.

Interest on loan and credit card

I've considered Miss B's explanation as to how she calculates the loss she says she incurred in being unable to pay off her loan, but I don't think it takes things forward. Miss B acknowledges the loan would have been consolidated into her new mortgage; that she would have paid interest even if that was at a lower interest rate; and that the loan would have been repayable over a much longer period of time. Miss B says only interest related to the loan should be taken into account - not overall interest for the consolidated debt into the mortgage. She says there's no evidence she would have paid more interest. And Miss B says the most important consideration is that if she'd paid off the loan, she would have been able to free up money and use it to invest in the new property and improve her and her daughter's situation overall.

It's up to Miss B to show she's incurred a loss. I don't think it's right to consider the loan in isolation, if that's what Miss B is suggesting. It should be considered as part of the new mortgage. Miss B's calculation doesn't take into account she'd still be paying interest on the loan amount – as part of the new mortgage – at a lower rate initially, but for much longer and with uncertainty about the rates that might be available after the initial fixed interest rate period came to an end. On the evidence Miss B's provided, I'm still not persuaded she's incurred a loss. So, I see no reason to change my mind on this issue.

I acknowledge Miss B's intentions were to invest into her new property to improve things for her family. I've taken this into account when considering distress and inconvenience.

I acknowledge Miss B says she would have paid of the credit card as well. But she hasn't provided any additional information about this issue or how she calculates her loss that leads me to change my mind about this aspect of her complaint.

Increase in home insurance premiums

Miss B argues it's because of MAB's negligence she is now required to pay higher insurance premiums for the foreseeable future. She says MAB offered to pay the difference between her insurance premiums before and after her claim for period 12 months. And she's argued it was reasonable for them to pay the difference for five years on the basis she won't be able to sell within that period - or at all.

I'm sorry to hear Miss B's insurance has increased again. However, the reason for her high premiums is because she can't access standard insurance due to suspected subsidence at the property even though subsidence wasn't found. I acknowledge Miss B will have to pay the higher rate unless she can resolve concerns she has about that with her insurer. But I can't reasonably conclude MAB are responsible for the increased premiums, even if she has to pay them because she couldn't move. I still don't think the additional cost is something the parties would have contemplated at the time they were discussing Miss B's mortgage. So, any loss is too remote, and it wouldn't be fair to ask MAB to compensate Miss B for her additional insurance cost.

Pension contributions

Miss B argues her complaint should be upheld in relation to this issue since MAB offered to pay her £163.90.

I've considered Miss B's complaint afresh and simply because MAB made Miss B an offer doesn't mean I should conclude it's fair and reasonable for them to make a payment. However, MAB are free to pay this sum to Miss B whatever I decide.

Loss of opportunity

Miss B says the award I proposed to make of £2,000 wasn't enough to compensate Miss B for the loss of opportunity she has suffered.

She argues she's lost the chance to invest in a property that might increase over time. She won't be able to buy a new property without the Help to Buy scheme. And MAB's insurers said they should offer at least £5,000 for their negligence.

The award of £2,000 I proposed making was to compensate Miss B for the distress and inconvenience she'd suffered. I took into account the issues Miss B has raised again, save for her argument that the property will increase over time and she's lost out on making a profit as a result. I think that's too speculative to take into account, and the property could

have reduced in value too. So I see no reason to change my mind about the award for distress and inconvenience.

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.

Bearing everything in mind, I see no reason to change the outcome I proposed in my provisional decision for the reasons I've explained.

Putting things right

Bearing everything in mind, whilst I understand it will be disappointing for Miss B, I see no reason to change my mind about how MAB should put things right for her. I'd clarify that the compensation should take into account anything MAB has already paid her for distress and inconvenience.

My final decision

I direct Mortgage Advice Bureau Limited to pay to Miss B:

- 1) To the extent they haven't already been reimbursed, and she provides evidence of payment, the reservation fee of £500, extras she paid for the new property and legal costs associated with the transactions;
- 2) Any estate agents' fees Miss B paid up to 14 January 2021;
- 3) Simple interest on the amounts in 1) and 2) at the rate of 8% a year from 14 January 2021 until payment;
- 4) Compensation of £2,000 for distress and inconvenience inclusive of any amount they have already paid to her.

If Mortgage Advice Bureau Limited considers that it's required by HM Revenue & Customs to deduct income tax from the interest, they should tell Miss B how much they've taken off. They should also give her a certificate showing this she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 11 April 2022.

Julia Wilkinson

Ombudsman