

## **The complaint**

Mr E and Miss L complain that Mortgage Advice Bureau Limited misled them about being able to claim a help to buy ISA scheme bonus. Mr E and Miss L ask for compensation.

## **What happened**

Mr E and Miss L were buying a property and took mortgage advice from MAB. They intended to use savings, including a help to buy ISA, for their deposit. They hoped to claim a bonus from the help to buy ISA scheme. This was subject to meeting the scheme's criteria. Mr E and Miss L say MAB told them this wasn't a problem. They say it knew they needed the bonus to make up the deposit.

Mr E and Miss L didn't meet the scheme's criteria for the bonus. They discovered this shortly before exchanging contracts and had to borrow from family and credit card accounts to make up the shortfall for the deposit. They say they lost the potential benefit of the bonus after saving into the ISA for many years.

MAB said it didn't advise Mr E and Mr L about the terms of the help to buy ISA and this was outside its remit.

Our investigator said while it wasn't MAB's role to advise on eligibility for the help to buy ISA scheme, it contributed to Mr E and Miss L's mis-understanding about this. Our investigator recommended MAB pay £100 compensation for its miscommunications.

MAB didn't agree. It said it isn't its responsibility to discuss eligibility for the bonus and it correctly referred Mr E and Miss L to the conveyancer. Miss L said £100 is a small amount to compensate them for the trouble they've been through.

## **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.

MAB questioned whether it's appropriate to rely on what Mr E and Miss L said was discussed at meetings, which it referred to as hearsay. Mr E and Miss L's testimony about what was discussed in meetings they attended is evidence – as is testimony from MAB's broker. How much weight I put on testimony depends on various things, including the credibility and consistency of a person's evidence and how this fits with other evidence such as contemporaneous notes, records, letters and electronic messages.

I should also explain that where evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

MAB gave mortgage advice to Mr E and Miss L. It says it's not its responsibility to advise whether they met criteria for the help to buy scheme bonus.

But just because advice about the help to buy scheme wasn't part of MAB's remit doesn't

mean it didn't give advice, or give the impression of doing so to Mr E and Miss L.

There were discussions between MAB and Mr E and Miss L about the help to buy ISA scheme before Mr E and Miss L found the property they went on to buy. MAB's broker says he had discussions with Mr E and Miss L from early 2022 while they were looking for a property, and this included discussions about the help to buy scheme.

Mr E and Miss L found a property and Miss L contacted MAB on 11 April 2022. She was worried they didn't meet criteria for the help to buy bonus due to the property purchase price being over the threshold. Miss L says MAB's broker told her there wouldn't be a problem.

Miss L provided a screen shot of text messages with the broker that day. Miss L asked "do you think because we are buying a house for £315[000] I won't be able to claim the extra money from my help to buy isa". MAB replied "No that will be fine. So you can. Solicitor will arrange collecting it for you on exchange". Mr E and Miss L say they received the same confirmation during a face-to-face meeting on 20 April 2022.

MAB's broker says he didn't know at this point where the property was located and his comment was only based on Mr E and Miss L being first time buyers. If so, I'd expect the message to say something along those lines, especially as Miss L had asked specifically whether the purchase price meant they wouldn't be able to claim the bonus.

Telling Miss L the solicitor would collect the bonus isn't the same as saying the criteria might not be met and this was something the solicitor would check. MAB could have replied to Miss L's text to say it didn't know if they'd be able to claim the bonus, it could have said this wasn't something it could advise on or it could have told them to check with their solicitor that they could claim the bonus. It didn't do this. Instead, it sent a message which Mr E and Miss L read as assurance they'd be able to claim the bonus.

MAB carried out a fact find which said the source of the deposit was savings. Notes made by MAB's broker say savings were evidenced. The fact find and the notes don't mention the help to buy scheme. However, MAB was aware that Mr E and Miss L didn't have enough savings for the deposit because it had statements for their savings accounts. On 21 April 2022 it sent an email to Miss L and Mr E which set out and added up the balances in their savings accounts. It asked for evidence of the remaining £4,000 needed for the deposit.

It's unclear how (if at all) Mr E and Miss L responded to the email. But what is clear is that they expected the shortfall to be funded by the help to buy bonus. Mr E and Miss L say all of their calculations relied on them receiving the bonus, and the savings account statements support this. I think MAB was aware that this was their expectation.

Based on the available evidence, I think MAB knew Mr E and Miss L were relying on the bonus to make up their deposit and would have a shortfall without it. Despite Mr E and Miss L asking MAB if they'd be able to claim the bonus it didn't tell them (as it should have done from the outset) that it couldn't advise them and this was something they needed to check with their solicitor. Mr E and Miss L say MAB told them it wouldn't be a problem, and I think the evidence from that time supports what they say. I don't think it was unreasonable for Mr E and Miss L to assume what the broker said was right. They wouldn't necessarily have known this was outside the broker's remit.

Mr E and Miss L were told by their solicitor in mid-July 2022 they didn't qualify for the bonus. This was because of the purchase price of the property. Mr E and Miss L decided to go ahead with the purchase and exchanged contracts on 20 July 2022. They had to borrow from family and use credit cards to make up the deposit and cover costs related to the purchase.

Mr E and Miss L were relying on the bonus to make up their deposit. The fact that they asked MAB about this on more than one occasion shows they were concerned about it. If MAB had told them it didn't know, or couldn't advise, whether they met the criteria and they needed to check this with the solicitor I think they'd have done so. Mr E and Miss L would have still needed to find money to make up the shortfall in the deposit. But they'd have had more time to plan how they'd do so.

Mr E and Miss L weren't unable to claim the help to buy ISA scheme bonus due to an error by MAB – they didn't meet the scheme criteria because of the property they bought. Mr E and Miss L went ahead with the purchase after being told they couldn't claim the bonus. I don't think I can fairly find they'd have made a different decision if they'd been told this in April 2022. While they'd been paying into the ISAs for some time, this money wasn't lost.

I don't think Mr E and Miss L were caused financial loss. And they were always going to have to find funds to make up the shortfall in the deposit. But I think finding out shortly before exchange that they had to find about £4,000 would have caused them upset, worry and inconvenience. This could have been avoided – or at least reduced – if MAB had told them earlier in the process to check with the solicitor whether they could claim the bonus. For the additional worry MAB's error caused, I think it's fair and reasonable to require MAB to pay £100 to Mr E and Miss L.

### **My final decision**

My decision is that I uphold this complaint and order Mortgage Advice Bureau Limited to pay £100 to Mr E and Miss L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Miss L to accept or reject my decision before 7 September 2023.

Ruth Stevenson  
**Ombudsman**