

## **The complaint**

Mr and Mrs P complain that Mortgage Advice Bureau Limited (MAB) provided poor customer service in the arrangement of a retirement interest only mortgage. This meant Mr and Mrs P lost out on the mortgage they wanted and incurred substantial costs. Mr and Mrs P are represented by their son-in-law Mr C in this complaint.

## **What happened**

Mr and Mrs P are a retired couple. At the time of this advice their property was mortgage free and they were making plans for their later lives. That included making some adaptations to their property – primarily the construction of a ground floor extension, as well as repairs and a new kitchen and heating system.

Having considered their options Mr and Mrs P had decided that they didn't want to take out a traditional lifetime mortgage because of concerns about the effect of roll-up interest on the eventual balance to be repaid. They considered that a retirement interest only mortgage (commonly known as a RIO) would be more appropriate for them. A RIO is a form of later life lending which would allow them to release some equity from their property. Like a lifetime mortgage there would be no obligation to repay the capital until they pass away or sell the property, but unlike a lifetime mortgage they are required to make monthly interest payments and so the overall capital debt does not grow.

With that in mind Mr and Mrs P approached MAB to advise on and arrange a mortgage for them. They wanted to borrow around £50,000. Mr C says they explained their needs to MAB, and explained the purpose of the borrowing. They told MAB that they needed the borrowing immediately because they needed to fund not only the construction work, but also the preliminary stages of getting architect drawings and applying for planning permission.

MAB recommended a RIO with a lender I'll call H, and made an application. H offered Mr and Mrs P a mortgage. The mortgage offer included a condition that planning permission must be in place before the funds could be drawn down. However, MAB didn't realise this at the time and so didn't draw the condition to Mr and Mrs P's attention. When he reviewed the offer, Mr C says he did spot the condition and queried it with MAB, but MAB told him that this wasn't something the lender required.

By September 2022, the conveyancing process was largely complete, so the solicitors (who were acting for both Mr and Mrs P and H) asked for agreement to a date for the release of the funds. The solicitor asked Mr and Mrs P for confirmation that planning permission was in place.

Because Mr and Mrs P hadn't realised that planning permission was going to be necessary for the mortgage funds to be released, and because they needed the funds to be able to draw up plans and make the application, planning permission wasn't in fact in place.

H agreed to a three month extension to the mortgage offer for Mr and Mrs P to obtain planning permission. Mr C says that they then started the application – though this caused them substantial difficulty because not only did they need to find additional funds for costs

they thought would be covered by the lending, but they also had to find an architect and builder able to work at short notice. And even if they were able to get plans drawn up and submitted, there was a real risk the local authority wouldn't consider and grant permission by the extended deadline.

Mr C says he explained these problems to MAB, but that Mr and Mrs P would do what they could, in September 2022.

In early December 2022 Mr and Mrs P were advised by their architect that their plans didn't require formal planning permission, but could be done as permitted development. Mr C passed this on to MAB and asked it to check with the lender whether that meant the requirement for planning permission in the offer could be removed and funds released.

Mr C complains that MAB took no action, and didn't make enquiries of the lender. There was no contact with the lender at all until the mortgage offer expired at the end of December.

Following the expiry of the offer, MAB contacted H to ask whether it could be reinstated or extended. H said that it couldn't, because it had taken a commercial decision, following the significant increase in interest rates in the latter part of 2022, not to further extend mortgage offers issued before then. If Mr and Mrs P still wanted a RIO, they would need to re-apply and any new offer would be at the interest rates available at the time.

In the end Mr and Mrs P went elsewhere, taking a mortgage that wasn't arranged by MAB.

Mr C complained on Mr and Mrs P's behalf. He made a subject access request for MAB's files. He says that MAB withheld things that it ought to have disclosed. But one of the things it did disclose was a recording of a phone call between MAB's adviser and H.

Mr C said that he had queried whether the lender needed planning permission before releasing funds in July 2022, but had been told by MAB that it didn't because it hadn't raised any queries about the issue. That turned out not to be correct, because the lender had included the requirement as a special condition in the mortgage offer.

On the phone call, the adviser said to H that "to be honest, we missed it [the requirement for planning permission]" and "it wasn't obvious, but we should have checked this ourselves." Mr C says that the inclusion of a special condition should have been an obvious thing a competent mortgage adviser checks for.

Mr C says that meant Mr and Mrs P were mis-advised by MAB in July that they wouldn't need planning permission to access the funds. MAB knew from the start that Mr and Mrs P's intention was not to apply for planning permission until after the mortgage completed, using the funds to pay for the application. So it ought to have told them as soon as the offer was issued that this wouldn't be possible – instead Mr and Mrs P only found out when the solicitors told them in September. This left too little time to complete the process before the offer expired in December.

Mr C also says that MAB told Mr and Mrs P, after the mortgage offer expiry date was extended for three months from September to December, that H would be willing to extend the offer again – at least until March 2023 and possibly indefinitely. This wasn't true, and MAB had no basis for telling Mr and Mrs P that H would be willing to do this.

And Mr C says that when he found out that planning permission wasn't needed in early December and told MAB about that, MAB took no action. It should have told H about this, and checked whether H would remove the special condition and allow the mortgage to complete. Instead MAB took no action until the mortgage offer expired. Had MAB acted in

early December, Mr and Mrs P may well still have been able to complete on the mortgage.

Mr C says that as a result of MAB's failings, Mr and Mrs P have suffered substantial losses. They paid a fee of £500 to MAB, and paid around £800 for architect and local authority fees. They have now found a mortgage with another lender, but because interest rates have increased in the meantime it's at a higher interest rate than the mortgage H offered. Over the five years of the initial fixed interest rate, this will cost Mr and Mrs P around £150 extra per month - £9,000 altogether. In addition to this, Mr C says Mr and Mrs P were caused substantial upset and worry.

MAB said it had recommended a RIO of £50,000, with an initial five year fixed rate of 3.05%, giving monthly payments of £127.08. H made an offer on 5 July 2022. The offer was valid for three months. It said it had made H aware at the application stage that planning permission was not in place. When the solicitors advised in September that completion could not happen because of the special condition, MAB spoke to H to ask if it would agree to release some of the funds before planning permission was in place. H didn't agree to that, but it agreed to extend the mortgage offer for it to be obtained. MAB said that H agreed to "keep the offer open" – an initial extension to 21 December would be granted. If a further extension was required MAB would need to make a request to H nearer the time.

MAB said that in December H said that the property valuation had expired and it would not agree a further extension to the offer. Mr and Mrs P would need to re-apply and any new offer would be at the interest rates then available.

MAB said it hadn't made any errors. It wasn't responsible for H's decision to refuse a further extension of the offer. It didn't uphold Mr and Mrs P's complaint.

Mr C brought the complaint to us, where it was reviewed by one of our investigators. He said the complaint should be upheld, and recommended that MAB pay Mr and Mrs P the difference between the monthly payments on the mortgage they eventually took and the payments on the offer from H, for the five years of the initial fixed rate, as well as legal and advice fees Mr and Mrs P had paid. And he said MAB should pay them £450 compensation for the upset caused.

As no agreement could be reached, the complaint comes to me for a final decision to be made.

### **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.

Following the submission of the application, H asked some questions relevant to affordability. It also asked for projected costs of the building works. On 30 June, it asked MAB to provide planning permission and confirmation the plans had been approved. MAB replied to say that planning permission had not yet been applied for because "they have only just got the quotes for the works and were not sure if they would get the funds to complete the work."

On 5 July 2022 H issued a mortgage offer for borrowing of £50,000 at a fixed rate of 3.05% for five years, followed by the standard variable rate (SVR). It said the offer was valid until 3 October 2022. There were no fees to be paid to the lender, and the offer included a free valuation and free legal work. The same solicitor would act for both parties.

In section 7 of the offer, headed "additional obligations", H said

“The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.

...

- Please provide us with the verification for the planning permission, building plans and regulations.”

So it's clear that H wanted to confirm planning permission was in place before releasing the mortgage funds, presumably because it knew Mr and Mrs P were planning to use the money to fund building work and wanted to make sure they did so properly and lawfully – as any failure to do so would affect the value of H's security for the lending. H asked MAB for that on 30 June. MAB said it wasn't available yet, so H included the condition in the offer.

I'd expect MAB, as a responsible mortgage adviser, to have reviewed the mortgage offer and drawn this condition to Mr and Mrs P's attention. MAB knew that Mr and Mrs P weren't intending to apply for planning permission until they received the funds, and it ought to have known – and ought to have advised them – that the lender was expecting the opposite to happen.

Had MAB advised Mr and Mrs P of this in good time, when the offer was issued at the beginning of July, Mr and Mrs P would then have had the choice of deciding not to go ahead with the mortgage, or of applying for planning permission at that point rather than after completion.

But there's no evidence MAB did advise them of this. On 6 July, Mr C acknowledged an email from MAB advising him that an offer had been issued. He said:

“Last week you asked about planning permission and my reply was noncommittal. I was expecting a reply to the question I raised but I cannot trace one from you or [MAB staff member]. I see the mortgage offer has been issued regardless without the planning question being answered.

Mr & Mrs [P] are still in discussions with builders about the exact nature and costings for the proposed improvements. Can you please confirm how long the offer can remain confirmed/open without funds being withdrawn? I thought it was either three or six months.”

MAB replied:

“We updated the lender with your response stating that there was no planning permission and they have reviewed and issued the offer. If they weren't happy with the response, they would have raised another query with ourselves.

The offer is valid until October, however if they are not ready to complete by then we can look at an extension.”

This was incorrect and misleading. MAB assumed that because H had issued a mortgage offer it had accepted that the mortgage could proceed without planning permission in place – but it hadn't, it had included the requirement in the mortgage offer. MAB should have checked the mortgage offer – both as a general obligation, and specifically before responding to Mr C's direct question – and confirmed what H's requirement actually was.

There is a call note in MAB's records from 19 July. It reads

“t/c with [Mr and Mrs P’s solicitors]

They are waiting on paperwork from the client – last email was sent on the 14th July

They have sent them the mortgage deed and questionnaire by email

They have also requested ID and proof of address (we can provide this)

They have asked the clients to provide planning permission, building plans and regulations.”

We asked MAB for a recording of this call, but it wasn’t available. However, I have seen a letter from the solicitors to Mr and Mrs P on 14 July. That letter makes no mention of the special condition, and doesn’t ask them for confirmation of planning permission or the other matters, despite what this call note says.

While I would expect MAB to have noted the special condition and drawn it to Mr and Mrs P’s attention – especially knowing that they in fact planned to use the lending to obtain planning permission – it’s also fair to say I would have expected the solicitors acting for them to have done that too. The call note suggests the solicitors told MAB they had done, but the letter itself doesn’t support that. And, judging by what happened when this was raised in early September, I think it’s reasonable to accept that Mr and Mrs P weren’t in fact told, either by MAB or by the solicitors.

Equally, however, if this call note is accurate, and bearing in mind MAB was expecting Mr and Mrs P to not apply for planning permission until after completion, it’s surprising the conversation didn’t lead it to question why the solicitors were asking for it now. And it’s also surprising that this didn’t prompt MAB to check what H’s requirements in fact were.

There was then some delay in conveyancing, because Mr and Mrs P’s previous mortgage lender hadn’t removed the charge when they repaid their mortgage in around 2017. This was resolved in August, and in early September things were ready for the mortgage to complete.

The solicitors set a completion date for 6 September. But on 2 September they emailed Mr C to say that H still required, but hadn’t received, confirmation of approval of planning permission and compliance with building regulations.

Mr C got in touch with MAB, who contacted H. MAB asked H to review whether the condition was necessary, or alternatively to complete with a retention. H didn’t agree to that, but did agree to extend the offer.

MAB’s note of its call with H, on 9 September, says

“They are happy to keep the offer open until they can be provided.

The offer will automatically extend for another 3 months on the 3rd October. Once we are nearing the January expiry date, we will need to contact [H] to request a further extension on the offer (if required).

At that point, a new valuation will need to be carried out, but there will be no cost to the client for this.

[H] are happy to keep the offer open until the client can provide the planning permissions.”

In fact, the offer was extended to 21 December. MAB asked H to confirm what had been discussed, and on 26 September H emailed MAB:

As per our conversation please see the notes on this file from a previous request:

‘As we cannot complete without the planning permission, we can keep the case open, we have 6 months on the offer and if still waiting for planning permission we can look to extend further if possible’”

These two accounts of the same conversation are slightly different – MAB’s notes say that H will keep the offer open until planning permission is granted, implying a further extension is a mere formality, whereas H’s notes only say that the offer has been extended and it will consider a further extension if possible at the time. I think H’s version is more likely to be correct; I’m not persuaded it’s likely a mortgage lender would be prepared to keep an offer open, or allow extensions, indefinitely.

On 8 December 2022, MAB asked Mr C for an update. Mr C said that plans had been submitted but that Mr and Mrs P had been advised that because of the small scale of the proposed extension, formal planning permission wouldn’t be required.

MAB didn’t pass this on to H until 21 December, the day the offer expired. Again, I find this surprising, since it was clearly crucial information relevant to whether Mr and Mrs P would be able to complete in time. When MAB did so, H replied to say that because the valuation had now expired the offer would not be extended and Mr and Mrs P must re-apply if they still wanted to go ahead.

On 22 December, MAB emailed H to appeal. It referred back to the 9 September conversation and said that the special condition had not been made apparent to MAB or Mr and Mrs P (that isn’t true; as I’ve said above, it was included in the offer and MAB ought to have understood that). H said that it was no longer prepared to consider an extension. Mr and Mrs P lost the mortgage offer as a result.

It’s important to bear in mind that there are three parties involved here, besides Mr and Mrs P – MAB, the lender H, and the solicitors acting for both H and Mr and Mrs P. This complaint is only about MAB, and I don’t have the power to investigate complaints about the other parties – because Mr and Mrs P haven’t complained to us about H, and because the solicitors don’t come within my jurisdiction. Equally, though, if I think that something did go wrong but that MAB wasn’t, or wasn’t solely, responsible for it then it might not be fair and reasonable to hold MAB solely responsible for compensating Mr and Mrs P for any losses that might result. So that’s something I need to give careful consideration to.

It’s clear to me that the special condition in the mortgage offer is a crucial point in this case. It meant that the mortgage offer wasn’t compatible with Mr and Mrs P’s plans. H wanted planning permission in place before lending; Mr and Mrs P needed the lending before applying for permission.

I think there is a responsibility on both MAB and the solicitors to draw the special condition to Mr and Mrs P’s attention. And, as I’ve set out above, the evidence suggests that neither in fact did that.

But I also think the responsibility on MAB goes further than merely drawing the condition to Mr and Mrs P’s attention to make them aware of what they needed to do before completion.

MAB was giving Mr and Mrs P mortgage advice. That meant it had a responsibility to understand their needs and circumstances, and in light of those needs and circumstances to

recommend the most suitable mortgage for them.

MAB knew Mr and Mrs P's situation, and knew their plans. When H made it clear – via the special condition – that taking the mortgage in the way they'd intended, to finance the planning application, was impossible, that ought in my view to have led MAB to reassess its advice. Clearly the mortgage that H offered wasn't suitable for Mr and Mrs P's needs and circumstances. MAB ought to have understood that. Having done so, it should have discussed things with H and with Mr and Mrs P to see if their positions could have been reconciled, and if not given Mr and Mrs P fresh advice on the basis that this mortgage was no longer suitable for them.

MAB didn't do that. It took no action until completion failed in September. It was only then that Mr and Mrs P became aware of H's requirements and started the process of applying for permission, and only in December that they were advised that, in fact, planning permission wouldn't be required at all. Even then, MAB could have resolved things in a way that might have allowed the mortgage to go ahead – it learned of this from Mr C on 8 December. That was two weeks before the offer expired – time enough for H to reconsider whether to remove the special condition. In fact, however, MAB didn't pass this on until 21 December, the day the offer expired. By then it was too late for H to reconsider and remove the special condition in light of that new information. The offer had expired and H wouldn't consider extending it. Had MAB not sat on its hands between 8 and 21 December, the mortgage might well still have been able to go ahead.

Had MAB taken note of the special condition when the offer was issued at the beginning of July, the outcome would have been different. In that situation, there are it seems to me two possibilities:

- Mr and Mrs P would have done in July what they ended up doing in September, deciding to go ahead with the planning application before taking the mortgage. In this scenario, they would have learned that planning permission wasn't actually needed before the offer finally expired in December, and having learned that with time to spare H might then have agreed to remove the special condition and allow the loan to complete.
- Mr and Mrs P would have decided not to proceed with H and look for another lender.

Properly advised, I think it's likely Mr and Mrs P would have taken the first of these options, since it's likely other lenders would take the same view as H, in not agreeing to lend to fund home improvements without evidence that they were permitted and compliant. And once H learned that planning permission wasn't actually required, it seems likely it would have agreed to remove the special condition that it should be in place.

I'm therefore satisfied that MAB should have understood the impact of the special condition, reflected on how it affected the advice previously given and the suitability of this mortgage for Mr and Mrs P's needs and circumstances, and revisited and updated its advice in light of that. And I'm further satisfied, on balance, that if it had done so Mr and Mrs P would have moved forward sooner and learned there was no need for planning permission; that H would then have removed the special condition; and that Mr and Mrs P would completed on this mortgage before the offer expired in December 2021.

And even though MAB didn't in fact notice the special condition or revisit its advice in light of it – as it ought to have done – the situation might still have been resolvable if it had acted on 8 December when it learned that planning permission wasn't needed after all. There was enough time at that point for H to consider whether to withdraw the special condition and go

ahead without it. But by the time MAB actually did tell H this, on 21 December, it was too late.

I do think there was also an obligation on the solicitors to draw the special condition to Mr and Mrs P's attention, and I've not seen evidence that persuades me that they did so. I think the absence of it from the advice letter is more persuasive than MAB's call note.

However, I don't think that affects my conclusion that it would be fair and reasonable to hold MAB responsible for Mr and Mrs P's loss. That's because, in their particular circumstances, the existence of the special condition directly undermined the advice MAB had given that this mortgage was suitable for Mr and Mrs P. As a responsible mortgage adviser, acting fairly, MAB should have revisited its advice when circumstances changed and the mortgage was no longer suitable. It didn't do that, but if it had done – for the reasons I've explained – it's more likely than not that Mr and Mrs P wouldn't have lost the mortgage. I think it's fair and reasonable to hold MAB responsible for the consequences of the failure to give that advice. And even with that failure MAB still had the opportunity to put things right on 8 December, but again failed to do so.

In all the circumstances, I'm satisfied that MAB's failure to give suitable advice after the offer was issued, and failure to act on crucial new information on 8 December, is the reason this mortgage didn't go ahead. I'm therefore satisfied that it's fair and reasonable to require MAB to pay compensation for that.

### **Putting things right**

To put matters right, therefore, MAB should put Mr and Mrs P back in the position they would have been in had they been able to complete on the mortgage with H, instead of the mortgage they actually took.

Mr C has provided evidence that Mr and Mrs P borrowed £47,000 plus £599 fees with another lender in March 2023. This was a lifetime mortgage, so not a directly like for like mortgage, though it does have the option to make interest payments. I understand Mr and Mrs P are doing so. As a lifetime mortgage, the interest rate is fixed for life at 6.03%, giving a monthly interest payment of £239.18. The mortgage with H was for £50,000. There was no lender fee. The interest rate was fixed for five years at 3.05%, to be followed by the standard variable rate. At the time of the offer the SVR was 5.1%; H's SVR has since increased and is currently 8.35%.

I think it's fair for MAB to pay Mr and Mrs P the additional interest they will be charged on their new mortgage for the five years of the fixed rate. I don't require MAB to pay redress beyond that point, because Mr and Mrs H would then have moved to the SVR. The SVR is now higher than the lifetime fixed rate on their current mortgage. It might be higher or lower at the end of the five year term, H might or might not have new fixed rates available, and Mr and Mrs P might or might not have been able to move to another lender at that point in search of a better rate. It's not possible to know whether there will even be a loss after the end of the fixed rate, let alone what it would be if so. But it is clear that in the first five years Mr and Mrs P will pay more interest to their new lender than they would have paid to H.

MAB should also refund the new lender's arrangement fee, which Mr and Mrs P wouldn't have had to pay had they been able to take the mortgage with H. For the same reason, it should also pay the broker and legal fees Mr and Mrs P incurred in setting up the new mortgage. But I don't require MAB to refund its own £500 fee, since Mr and Mrs P would have had to pay that to obtain the mortgage with H. It's right that they shouldn't have to pay two broker fees, but they would always have had to pay one.



Finally, Mr and Mrs P have been caused significant trouble and upset by what happened – in particular the worry of losing the mortgage and not knowing if they would be able to fund the home improvements they wanted, and then having to go to another lender, paying extra fees and interest. I think £450 is fair compensation in all the circumstances.

### **My final decision**

My final decision is that I uphold this complaint and direct Mortgage Advice Bureau Limited to:

- Pay Mr and Mrs P the difference between the interest charged over 60 months on the £47,000 mortgage they ended up taking at 6.03%, and the interest on the same amount at 3.05%. I don't require MAB to pay 8% interest on the amounts Mr and Mrs P have already paid since the loss in being out of pocket for payments already made is offset by the benefit of getting the refund for the remainder of the fixed rate term in advance.
- Pay Mr and Mrs P the £599 arrangement fee on their new mortgage. Because Mr and Mrs P added this sum to the mortgage balance, MAB should add compound annual interest at 6.03% running from the date the mortgage completed on 16 August 2023 to 14 days after the date the refund is paid. This is to give Mr and Mrs P time to use this refund to reduce the balance of their new mortgage if they choose to do so. If they do and if the new lender charges an early repayment charge on overpayments, MAB should cover that cost too.
- Pay Mr and Mrs P £876 in respect of the legal fees paid for their new mortgage, adding simple annual interest of 8%\* running from 16 August 2023 to date of refund.
- Pay Mr and Mrs P £895 in respect of the broker fee paid for their mortgage advice. Mr and Mrs P paid this in two instalments. So MAB should add simple annual interest of 8%\*, on £350 from 1 June 2023 to date of refund and on £545 from 16 August 2023 to date of refund.
- Pay Mr and Mrs P £450 compensation.

\* MAB may deduct income tax from the 8% interest element of my award, as required by HMRC. But it should give Mr and Mrs P a tax deduction notice so they can reclaim the tax from HMRC if they're entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 20 March 2024.

Simon Pugh  
**Ombudsman**