

## **The complaint**

Mr B's complaint is about the port of an existing interest product to a new mortgage with the same lender. The application was made through an appointed representative of Mortgage Advice Bureau Limited (MAB) and Mr B considers that it didn't fulfil its responsibility toward him when his circumstances changed, and he needed to find out if his new arrangements were acceptable to the lender. As such, he commissioned his solicitors to find this out, which cost him £420 and caused him anxiety and inconvenience, for which he wants to be compensated. Mr B is also unhappy about how his complaint was handled.

Mr B is represented in his complaint, as he was when arranging the mortgage, but for simplicity I will refer to all actions and comments as his where practical.

## **What happened**

Mr B took out his mortgage with lender N in 2019. Attached to the mortgage was a fixed interest rate product that was due to end in June 2024. Until the end of the product term, an early repayment charge (ERC) was payable if he paid off the mortgage.

In the spring of 2022 Mr B decided to move home. He applied, with the assistance of MAB, for a new mortgage and to port the existing product to the new mortgage. The application was accepted and a mortgage offer was issued by lender N in June 2022. However, the sale of Mr B's existing home was progressing slowly and the property developer from which he was buying his new home was losing patience with the timescales of the new purchase. It set an exchange date of 19 August 2022, or Mr B would risk losing the property.

Mr B was in a position to borrow sufficient money from a relative to pay off his existing mortgage, which he hoped would allow the port to happen. Mr B's relative has said they had checked this was an option at an earlier date, and lender N had confirmed it was acceptable for this to happen. It was decided Mr B would borrow the required money to clear the existing mortgage so the purchase of his new home could go ahead. However, Mr B's solicitors wanted confirmation in writing from lender N that this was acceptable to it before it was willing to move forward with the process. Mr B has reported that the solicitors instructed that MAB should obtain the confirmation it wanted.

Mr B has confirmed that MAB was asked to get the necessary confirmation on 19 August 2022 and told it the confirmation was needed that day. However, despite reassurances that MAB would get back to Mr B that day, it did not. Exchange still took place, with a completion date set for 31 August 2022.

Mr B chased MAB the following day, which was a Saturday. It dealt with the email early on the following Monday morning (22 August 2022), by emailing Mr B's solicitors to ask to discuss its requirements. The solicitors told MAB to call it the following day. MAB responded to Mr B confirming that it had been in touch with lender N and needed to speak to his solicitor to clarify some information it had access to.

Mr B responded to MAB on the same day and said he would prefer it not to speak to the solicitors, due to the costs involved. MAB confirmed that it needed to reference information

contained in the lenders handbook, which the solicitors had access to. Mr B acknowledged this explanation and made no further objection.

MAB called Mr B's representative on 25 August 2022 having discussed the situation with lender N. It said:

*"I managed to get hold of [lender N], it was all in the timing at the end of the day. Um, so, unfortunately, as I thought basically the reason why it's not possible is because, because [Mr B] would technically legally own both properties at the same time, it wouldn't meet the terms and conditions of that mortgage offer. So for the mortgage to be ported the existing property has to be sold and completed um and that's the term that's not met, and that's why [Mr B's solicitor] is concerned because he knows that it doesn't meet the terms and conditions of that offer and that's"*

Mr B's representative then interrupted MAB and said *"So where does that say that in the terms and conditions because I understand the bit about [Mr B] owns the property, but [Mr B] wouldn't own the property because it would be done on a contemporaneous way with the purchase of plot 88 and the provision of our funds. So he never would own it because [lender N] would get their mortgage redeemed ur prior to [Mr B] purchasing the property."*

MAB responded *"Yeh, I understand that but from the eyes of the lenders perspective though, they haven't, their debt has been repaid on the existing property, [Mr B] still owns that property and the terms of that mortgage being moved over, um is on the basis of that property is completed and he is no longer on the deeds of that property. Whereas he's not going to be, technically for a few days, he'd have two homes. And until that sale has gone through and completed, um so for that reason, um it's not, you know the application has not been submitted and underwritten on the basis he's going to keep his existing property and so for that reason it doesn't, doesn't meet criteria."*

Mr B's representative responded by asking *"So do you know what by, this thing about 'repayment by any means' actually means?"*

MAB responded with *"It's not, um it's not something BDM [the broker contact team at lender N] to be honest was able to answer when I asked that question. But she was just, but when I explained the actual scenario of what we were doing um she was adamant that it wouldn't, that it wouldn't work. But obviously the understanding of the legal terminology is more a sort of a question for your legal representative to sort of explain and um."*

Mr B's representative went on to confirm *"No, he hasn't got a clue; he's already told me that; he doesn't know. That's why he was you know relying on... Thanks for clarifying that anyway."*

MAB then ended the conversation by stating it would add details of the conversation to its notes and offering any further assistance it could provide.

Mr B has told us that it was decided at this point to stop pursuing the matter via MAB. Lender N was called directly the following day, where he told it that his solicitors had asked him to call as they had a situation with the porting and needed to get agreement for how that would be taken forward. Mr B was asked to get his solicitors to call.

Mr B's solicitor called lender N twice on 30 August 2022 and three times on 31 August 2022. The first two calls related to the question of whether Mr B was able to do what he wanted. Following explaining the situation to lender N, the solicitor was asked to put in writing the new arrangement for the underwriters to consider. It did that and Mr B's relative confirmed the source of the funds later that day. Confirmation was sent to the solicitors by email the

following morning that lender N was happy to proceed on that basis. The calls on 31 August 2022 then related to arranging for the funds to be released to allow Mr B's purchase and port to complete.

Mr B's solicitor requested the funds for completion on 31 August 2022, the day completion was meant to take place. Lender N rushed the payment through and Mr B's purchase was able to complete and the interest rate product was ported across.

Mr B complained to MAB in September 2022. It responded to the complaint in its letter of 5 January 2023. It explained that its role was to provide advice and process the mortgage up to and including when the mortgage offer was issued. Any issues that arose after that would usually be dealt with by the solicitors direct with the lender. That said, it confirmed that when it was asked about the mortgage being ported before the sale of Mr B's existing property, this would not be permissible under the wording of the mortgage offer and it would need to be amended. It also considered Mr B had received responses to his correspondence within a reasonable timescale, although not always the immediate response that he wanted. MAB acknowledged that Mr B was not happy with the service he had received and apologised for that, and offered as a gesture of good will, £200 compensation.

Mr B was not satisfied with the response and considered that there were significant factual errors in what MAB had said. Following further correspondence between the parties, he decided to refer the complaint to this Service.

One of our Investigators considered the complaint, but she was satisfied the compensation MAB had already offered was an appropriate amount and sufficient to settle the complaint for the poor service provided. Furthermore, she was not persuaded that it was responsible for the additional legal costs being incurred. The Investigator also highlighted that we could only compensate Mr B for any worry or inconvenience he personally suffered, and could not make an award for the effect the events had on his representative.

Mr B didn't accept the Investigator's conclusions and asked that the complaint be passed to an Ombudsman for review. He reiterated that he believed MAB had asked lender N the wrong question, rather than it having been given the wrong answer. In support of this, he referred to the description of the situation MAB had included in its final response letter. He also disputed that any legal costs would have been incurred had MAB obtained the written confirmation Mr B's solicitors wanted.

I issued a provisional decision on 19 January 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'If the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances.*

*There are two key aspects to this complaint, the first being that Mr B believes MAB didn't do what it should have and this caused him a financial loss. The second being the level of service that was provided in that he was not kept up to date with the situation and the overall timescale for him to receive the response he did.*

*Mr B has said he believes that MAB asked lender N the wrong questions and so he had to get his solicitors to repeat the enquiries and that cost him money. In this case Mr B's solicitors was concerned that his paying off the mortgage with borrowed funds, rather than selling the property, would not comply with the terms and conditions of the mortgage offer and so his port could not happen.*

*I would at this stage confirm that a mortgage broker's role is predominantly to do with matters in the run up to the mortgage application being accepted and an offer being made. While a broker will keep an eye on the progress of a mortgage thereafter, they usually have little material involvement. If the solicitors acting for the borrower have concerns about the mortgage offer, it would be usual for the solicitor to address their queries directly to the lender, rather than doing so via the broker, as happened in this case.*

*While Mr B has said his representative's recollections of the conversation with MAB on 25 August 2022 indicate that MAB asked lender N the wrong question, having listened to the recording of that conversation, I do not agree. I am satisfied that the correct question was asked and Mr B was given the answer MAB obtained. While he didn't like the answer and appears to have decided to pursue the matter with the lender himself, that doesn't mean MAB did anything wrong.*

*I would also comment that while Mr B's pursuit of the matter ended up with a different outcome, I also don't think that that indicates MAB did anything wrong. Mr B spoke to a different department and it is clear from the fact that his solicitors had to provide written confirmation that his sale was going ahead and the money Mr B was borrowing to clear the existing mortgage would be repaid from the sales proceeds, that the underwriters decided to allow the arrangement as a concession to the usual requirements for porting.*

*I now turn to the matter of the service Mr B received between 19 and 25 August 2022. He has said that he didn't receive the level of communication he expected, and the timescales were not acceptable, given the urgency of the situation. I can well understand that Mr B wanted the answer to his solicitors' question immediately, but that is unlikely to have been a realistic timescale. Having read the emails between the broker and Mr B's representative and his solicitors, it is clear that MAB felt it needed to discuss the matter with the solicitors, who were not available until 23 August 2022. While Mr B has said this did not happen, I am not persuaded from the evidence I have that is the case. MAB then had to get lender N to answer the question. MAB provided Mr B with lender N's answer to the question four working days after Mr B asked it to get him an answer and only two working days after its discussion with the solicitors. I don't consider this timescale was unreasonable, as MAB was dependent on other parties to obtain the answer Mr B needed.*

*That said, it does appear MAB may not have kept Mr B updated in the way it said it would. MAB has offered £200 compensation for any omissions in its communications, and I am satisfied that is in line with what I would award in the circumstances.'*

MAB confirmed it accepted my provisional decision and had nothing to add.

Mr B confirmed he had no additional facts to offer and set out why he disagreed with my conclusions. He reiterated his previous comments about the role of the broker, the conclusion that the lender had allowed the revised arrangements as a concession and that the MAB had spoken to the solicitors. Mr B also considered the urgency to him of the issue and the requested short turn around for a response, meant that the timescales involved were not reasonable. He repeated that this failure on the part of MAB was the reason his solicitors had to become involved, with the resultant charge to himself.

### **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 considered everything Mr B has said in response to my provisional decision and I have reviewed the file again in its entirety. The points Mr B made in response to my

provisional decision had been made before I reached that decision and were carefully considered when I did so. The reiteration of those points has not caused me to change my conclusions. Having revisited my provisional decision, I am still of the opinion the offer made by MAB is appropriate and proportionate in the circumstances of this case.

### **My final decision**

Mortgage Advice Bureau Limited has already made an offer to pay Mr B £200 to settle the complaint and I am satisfied this offer is fair in all the circumstances. As such, my final decision is that Mortgage Advice Bureau Limited should pay £200 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 23 February 2024.

Derry Baxter  
**Ombudsman**