

The complaint

Mr and Mrs B complain that Mortgage Seeker Limited – a mortgage broker and appointed representative of Mortgage Advice Bureau Limited (MAB) recommended a mortgage that was unsuitable for them.

What happened

In early 2023, Mortgage Seeker gave Mr and Mrs B mortgage advice. I will refer to MAB throughout this decision for ease and as it is the principal firm that has responded to this complaint.

In its suitability report, MAB identified that Mr and Mrs B had a preference to offset their existing savings against the mortgage balance *“meaning that no interest will be charge (sic) on the product...”*

MAB recommended that Mr and Mrs B should take an interest only mortgage with lender B. The interest rate was a tracker that was 1.25% above the Bank of England base rate, with a floor of 1.5% until 29 February 2028. An early repayment charge (ERC) of 1% of the mortgage balance applied if the mortgage was repaid on or before 29 February 2028. The mortgage included a linked savings account that could be used to deposit credit balances that could be offset against the debit balance.

On 15 February 2023, Mr B asked MAB by email *“Does it fully offset?”* MAB replied copying the wording from lender B’s illustration. Mr B said, *“That looks to me like it fully offsets, am I reading that correctly?”* MAB replied *“My understanding is the same as yours. For example if you had 100k mortgage and 100k in the offset account then no interest is payable.”*

Mr and Mrs B accepted MAB’s recommendation and went ahead with the mortgage with lender B. But they discovered that it did not operate as they expected. They said that:

- The interest did not set off at all in the first month.
- Any offset credit interest is applied against the mortgage interest the following month. So if the first month was 30 days and the second month was 31 days, then they have to pay 1 day’s interest. In March each year they would have to pay two or three days’ interest.
- If a longer month preceded a shorter month, they did not receive an additional days’ credit.
- If the interest rate goes up, then the offset credit interest is calculated at the pre-rate rise lower interest rate – so they have to pay the difference.

Mr and Mrs B complained that MAB recommended a mortgage that was not appropriate for their needs.

MAB did not accept that the mortgage had been mis-sold. It said:

- It had queried the conditions of the mortgage with lender B before recommending it to Mr

and Mrs B.

- It had asked Mr and Mrs B to review the mortgage's terms and conditions before proceeding. Mr B had confirmed he'd done so. It also sent a link to lender B's website.
- MAB made sure that all necessary information was given to Mr and Mrs B .
- None of the information it gave Mr and Mrs B differed from the information on lender B's documentation or website.

Subject to any further submissions, I issued a provisional decision proposing to uphold the complaint. My provisional findings, which form part of this decision, were:

Under MCOB MAB was required to recommend a mortgage that was suitable for Mr and Mrs B's needs and circumstances. The evidence we have shows that Mr and Mrs B wanted a mortgage where they could fully offset their savings against the mortgage balance and where they did not have to make any payments.

Putting aside whether the mortgage is "fully offset" or not, it clearly was not suitable for Mr and Mrs B's needs. I say that as there was a requirement for them to make payments to the mortgage. That is not what they wanted, so the mortgage was unsuitable – it was not appropriate for their stated needs and circumstances.

I'm surprised by the arguments put forward by MAB to defend its position. Mr and Mrs B were entitled to rely on the advice they'd been given and that the mortgage was suitable for them. MAB was the expert and Mr and Mrs B are consumers. It was for MAB to make sure that the product it recommended met their needs. It is unreasonable to suggest it is for a consumer to double check that the mortgage is suitable for them when they have received mortgage advice.

I agree that it would not be reasonable for every mortgage broker to read every set of mortgage terms and conditions as MAB has suggested. But that might be necessary in individual cases if they need to ensure that a specific mortgage or feature of the mortgage meets the needs of individual consumers and/or that the mortgage operates as they believe.

I do not consider that MAB has treated Mr and Mrs B fairly. The mortgage it recommended Mr and Mrs B did not meet their need for the mortgage balance to be fully offset.

I note the explanation given by lender B at a very late stage of the complaint. But even if the mortgage did operate in that way, it would still not be suitable for Mr and Mrs B. That is because it required Mr and Mrs B to make payments to the mortgage and that is not what they wanted.

If MAB considers that lender B gave it incorrect or misleading information then that is a matter for it to take up directly with lender B.

Putting things right

There is no evidence that there was any mortgage available that operated in the way that Mr and Mrs B wanted and needed. Therefore, I do not see how MAB could have recommended any mortgage to Mr and Mrs B. Even if MAB considered that the mortgage with lender B was the most suitable mortgage it could identify, if it had given Mr and Mrs B clear, fair and not misleading information about how the mortgage operated, I consider it likely that Mr and Mrs B would have rejected that advice. It is clear that a mortgage that operates in this way was not what they wanted.

I do not consider it would be fair and reasonable to allow the mortgage to continue. There is an unreasonable amount of ongoing inconvenience to Mr and Mrs B in managing the mortgage that they would not have accepted had it been explained to them at the outset.

Where a business has not acted fairly, we usually look to put the affected party back in the position they would have been in had they been treated fairly in the first place. If MAB had acted fairly, it would not have recommended this mortgage to Mr and Mrs B and/or they would to have accepted any such recommendation had it been explained properly.

Set up fees

MAB should refund the product fee of £1,749 and the funds transfer fee of £35. Mr and Mrs B would not have had to pay those fees had they not gone ahead with the mortgage. It appears that Mr and Mrs B paid the lender those amounts directly. So MAB should pay interest on those fees at 8% simple per year from the date they were paid until date of settlement. I am not aware of any other fees or costs that Mr and Mrs B paid when the mortgage was taken out.

Exit fees

Mr and Mrs B have told me that they will use the funds in the linked savings accounts to repay the mortgage. If they do so, MAB should refund the ERC of 1% of the mortgage balance and the mortgage exit fee of £80 when the mortgage is repaid.

I would invite both sides to tell me how that will work in practice. For example, do Mr and Mrs B have the means to pay the ERC and have MAB refund it within a defined timescale? I have made my own proposals for how this will work below – but I may change that depending on the responses I receive

Interest

That leaves the interest that Mr and Mrs B paid to the mortgage. I've thought carefully about what is a fair way to put this right. I accept that Mr and Mrs B would not have had to pay any interest had they been treated fairly. But it is not clear that they have actually paid any interest or suffered a financial loss because of the way the mortgage operated. And even if they had, I consider they could have mitigated any loss. I will explain why.

The evidence we have shows that when Mr and Mrs B made a payment to the mortgage – the debit balance reduced by the same amount. So they did not actually pay any interest to lender B. Each payment was used in full to reduce the debit balance of the mortgage.

For example, in December 2023 Mr and Mrs B paid £83.84 – because the preceding month had fewer days. But the statement shows the debit balance was immediately reduced by that amount. Therefore they did not pay any interest to lender B. If they had the debit balance would not have reduced. I agree that is not what Mr and Mrs B wanted. But it is not a financial loss. The amount needed to repay the mortgage has reduced in line with all of the payments they have made.

Another example is March 2024. Lender B's statements shows that interest of around £200 was due. Mr and Mrs B did not make any payment to their mortgage. But the debit balance of the mortgage did not increase.

The evidence I have shows that Mr and Mrs B were sent an offset mortgage statement each month. The statements set out in a clear and prominent way what the credit and debit

balances were. Mr and Mrs B could therefore see the debit balance had reduced and that their credit balance was higher than it needed to be. So they could have reduced the credit balance by an equivalent amount to the “interest” they paid and mitigated any loss by recovering the amounts they had paid. Therefore I am not proposing that any of the “interest” payments should be refunded. Nor do I consider that MAB should pay interest for the period Mr and Mrs B were “deprived” of those funds.

I accept that there was a great deal of confusion when the mortgage was set up. Mr and Mrs B had not deposited a sufficient credit balance to offset the full debit balance – it was around £3,000 short. So they would always have had to pay that amount to make sure that the account was fully offset. And they have explained that amount was easily accessible for them. They would always have had to pay that amount had the mortgage operated as they expected and they wished to fully offset.

When Mr and Mrs B paid the initial interest in mid-September 2023 of just under £4,500, the mortgage balance reduced by that amount. That meant they were now offsetting the full mortgage balance. Effectively around £3,000 of the amount they paid they would always have had to pay to offset the full mortgage balance. I can see Mr and Mrs B increased the amount of their credit balance at that time. But again, I think they had enough information to adjust the credit balance in line with the debit balance.

I understand why Mr and Mrs B were confused that they were being asked to make payments bearing in mind what they’d told MAB about what they wanted the mortgage to do and the assurances they’d received as to how the mortgage operated. But for the reasons I have set out, I don’t consider the payments they made have resulted in a loss – and even if it did they could have mitigated any loss by adjusting the credit balance in the linked savings accounts.

Mr and Mrs B have also said that because of the way the mortgage operates when a 31 day month precedes a 30 day month, there is no additional credit. But bearing in mind that any payments they made were used to reduce the mortgage debit balance, I don’t consider that any such credit would be due to them. I have not seen any evidence that supports they have, in fact, paid any interest to lender B.

Distress and inconvenience

Where a business has acted unfairly, I must consider the impact on the affected party. I can make an award to reflect the distress, inconvenience and suffering caused to Mr and Mrs B. Mr B has told us that this matter has caused him stress, loss of sleep and health issues along with a significant amount of time he has had to spend dealing with this matter.

Considering what Mr and Mrs B have said, and looking at our guidelines for awarding this type of compensation, I consider a payment of £750 would be fair and reasonable to reflect the distress and inconvenience caused to Mr and Mrs B by this matter.

Mr and Mrs B responded to make a number of points, including:

- They understood that the payment lender B requested were for interest, not unscheduled repayments of the principal balance.
- In all their correspondence to lender B about this matter they assumed that the payments applied to the principal balance would be reversed at some point. It was likely to be an oversight that had not happened.

- They thought the incorrect application of interest would be sorted out when the mortgage was redeemed.
- Nobody could be sure that lender B would not reclaim the interest at some point.
- The wording in my provisional decision that they could have mitigated their loss was “harsh”. They truly believed the payments were interest. It was only lender B’s error that meant they were applied as capital reductions. They could not avoid or mitigate the payments they were asked to make by lender B.
- If lender B were to correct its “error” and say they owe the interest, then there is nothing they could do to mitigate that and they’ll be left out of pocket. So I should tell MAB that it is obliged to repay any interest they are obliged to pay to lender B.
- While they could fund payment of the ERC, it was unreasonable to suggest that they go further out of pocket to sort things out. They proposed that MAB should pay the ERC when they requested that the mortgage should be repaid.

I asked lender B for clarification. I pointed out its regulatory duty to provide accurate information and that I was relying on the information to make a decision on this case. I highlighted there was the potential for detriment to Mr and Mrs B and/or MAB if they were to accept a decision and it later turned out that the information was incorrect. That is because I was awarding compensation based on what it said.

Lender B provided a copy of an up-to-date redemption statement. That showed the balance reflected that all of the payments Mr and Mrs B had made were used to reduce the principal balance, with no further interest due. Lender B confirmed that, *“the amount required to redeem the mortgage would be the amount reflected on the final redemption statement, which will be the current balance on the day the mortgage is redeemed (along with any early repayment charge and mortgage exit fee applicable) so we would not later look to recover any “interest” paid which was used to reduce the principal balance.”*

MAB did not accept my provisional findings. It said, in summary:

- It didn’t understand why it was being pursued for this complaint as it was lender B that gave it incorrect information.
- I seemed “worried” that lender B wasn’t sure about its internal calculations and whether it was doing the right thing. Lender B should be compensating Mr and Mrs B. Why was the original complaint against lender B not upheld?
- We should explain to Mr and Mrs B that they have not lost any money overall. Anything they have paid will be repaid in full. If they waited until the fixed rate deal ends then they would get all their money back without incurring the ERC. The lending facility would remain available to them to use if they wished.
- Mr and Mrs B’s complaint arose because they believed the money was “paid/spent/costing them”. That is correct in the short-term but it will be paid back in the long-term.
- MAB agreed that it was wrong to tell Mr and Mrs B there would be no payments. Either it or lender B should cover the loss of interest on the money they have paid. But it thought that should be explained to Mr and Mrs B that the money is still theirs. As rates have reduced the situation may improve in the future.

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 has accepted that it was wrong to tell Mr and Mrs B they would not need to make payments to the mortgage. I am satisfied that one of Mr and Mrs B's needs was that they did not have to make any payments. Therefore, I do not consider that the mortgage MAB recommended was suitable for Mr and Mrs B – it was not in line with their preference not to make any payments. And I consider it unlikely that Mr and Mrs B would have taken the mortgage had they received a clear, fair and not misleading explanation from MAB about how it operated and in particular that they would need to make payments to the mortgage from time to time. So I do not consider that MAB treated Mr and Mrs B fairly or reasonably in recommending the mortgage it did.

Usually, where a business has not treated a consumer fairly, we look to put the consumer in the position they would have been in had they been treated fairly. In this case, if MAB had properly taken account of Mr and Mrs B's requirement not to make any payments to the mortgage, then it could not have recommended the mortgage it did. I have not been presented with any evidence that there was any mortgage that met Mr and Mrs B's needs. Therefore if MAB had treated Mr and Mrs B fairly it would not have recommended any mortgage to them.

It follows, that Mr and Mrs B would not have taken a mortgage and would not have had to pay any of the fees in setting the mortgage up. So I see no reason to change my findings that MAB should refund the set-up costs of the mortgage with interest.

In respect of the payments that Mr and Mrs B have made to the mortgage, I am satisfied based on what lender B has said and the evidence it has provided, that it is more likely than not that they have not paid any interest to the mortgage and that no further interest will be due. I accept that when lender B asked for payments it said they were for interest due. But the evidence we have supports that all of the payments they made were used to reduce the capital balance of the mortgage. Lender B has confirmed that is correct. So there was no financial loss to Mr and Mrs B – the principal balance reduced by the full amount of the payments they made. If that later turns out to be incorrect – or any interest is applied - then Mr and Mrs B can complain to lender B.

I accept that Mr and Mrs B have been deprived of the funds they used to make the payments. I have considered whether MAB should pay them interest for the time they did not have use of the funds they paid to the mortgage. But Mr and Mrs B were sent statements by lender B each month. It was set out clearly that the amount they held in their savings credit balance was more than capital debit balance. So they could have withdrawn an equivalent amount and mitigated that loss. I would clarify that I am not saying that Mr and Mrs B could have avoided the payments that lender B asked them to make. Rather they could have adjusted the amount in the linked savings account to reflect that the principal balance went down each time they made a payment.

In saying that, I accept there was a degree of confusion and uncertainty about whether lender B was applying interest or not. But even taking that into account, I am not going to make an award to reflect the cost to Mr and Mrs B in being deprived of the money they paid to lender B. I say that because while MAB was responsible for unfairly recommending the mortgage, it was the lender who collected the payments and was responsible for giving Mr and Mrs B clear, fair and not misleading information about how the mortgage operated once

it was in place. In the circumstances I do not consider it would be fair for MAB to compensate Mr and Mrs B for any ongoing confusion about how the mortgage operated once the mortgage had started.

I have not made any findings about whether lender B acted fairly or reasonably. I can't do so as I am only considering a complaint against MAB here.

I note the points that MAB has made about lender B's responsibility in this matter. The complaint against it was resolved and I was not involved in the outcome of that. It does not change that MAB was giving mortgage advice and was responsible for the advice it gave. If it considers that lender B was responsible for the advice it gave then that is something that it would need to take up with lender B.

MAB also considers that Mr and Mrs B should let the mortgage continue as there is no ongoing financial loss and they could avoid the ERC. Bearing in mind I've found the mortgage was unsuitable for Mr and Mrs B and it has accepted that it incorrectly led them to believe that no payments would be required, I'm surprised that MAB considers that they should let the mortgage continue. That is unlikely to result in a good outcome for Mr and Mrs B that enables them to meet their financial objectives and avoid foreseeable harm as the lender B will continue to ask them to make payments. MAB was responsible for the unsuitable recommendation – so it should meet the costs of Mr and Mrs B getting out of the contract they entered into as a result of that unsuitable advice.

Mr and Mrs B are fully aware of all the issues regarding this complaint. Ultimately it is up to them to decide whether to let the mortgage continue or not. But if they do repay it, then it is fair in the circumstances for MAB to refund the ERC and any other costs they incur in repaying the mortgage.

Mr and Mrs B have said they do not want to be out of pocket by paying the ERC upfront. But they've told me they can find the funds necessary to do so. If they accept my final decision MAB will be bound to do what the decision says. It would be obliged to refund the ERC in full within 14 days – if it does not do so then it would be required to pay interest on the ERC from the point it was paid.

I do not consider it would be fair for MAB to pay the ERC if Mr and Mrs B merely tell lender B they want to repay the mortgage. Until they have actually paid the ERC they will not have suffered any financial loss. And if they were to tell lender B they planned to repay the mortgage that would not oblige them to do so. So I don't think it would be fair for me to say the ERC should be refunded until it has been paid.

It is up to Mr and Mrs B whether they choose to repay the mortgage and incur the ERC or not. But I think the mechanism I set out in my provisional decision for them to be refunded is a fair way to compensate them if they do pay an ERC. And it is in line with how we would usually look for such a loss to be remedied.

My final decision

My final decision is that Mortgage Advice Bureau Limited should:

- Refund the product fee of £1,749, the mortgage transfer fee of £35 and any other costs that Mr and Mrs B had to pay when arranging the mortgage.
- Pay interest on the above amounts at 8% simple per year from the date Mr and Mrs B made those payments until date of settlement. If MAB considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs B

how much it's taken off. It should also give Mr and Mrs B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

- If Mr and Mrs B repay the mortgage in full within 60 days of the date they accept this final decision and provide evidence to MAB they have done that, MAB should refund any ERC and exit fee applied by lender B within 14 days. If it does not make the payment in 14 days it should pay interest at 8% simple per year from the date Mr and Mrs B made the payment until date of settlement.
- Pay Mr and Mrs B £750 for any distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 19 February 2025.

Ken Rose
Ombudsman