

complaint

Mr and Mrs B complain Mortgage Advice Bureau Limited (MAB) failed to act professionally when making an application for a remortgage. And that as a result of its advice they paid off debts they now wish they hadn't.

background

Mr and Mrs B have a history of taking out payday loans. They had found in the past that this made it more difficult to secure a mortgage. But they had previously obtained a mortgage with the help of someone I'll call 'Mortgage Adviser 1'. So when they were looking to remortgage they returned to Mortgage Adviser 1 for help.

In the contract between them and Mortgage Solutions which names Mortgage Adviser 1 as the arranger it says that Mortgage Solutions is a trading name of MAB. They have therefore brought this complaint against MAB.

In March 2017, they received a key facts information sheet. Mr and Mrs B were happy with what they had seen and agreed to progress things. Unfortunately the lender set out in the key facts information sheet ('Lender 1') wouldn't lend to Mr and Mrs B. Mortgage Adviser 1 then looked to another lender, I'll call Lender 2. Lender 2 would consider Mr and Mrs B but only after some debts were repaid. Mr and Mrs B feel that Mortgage Adviser 1 made them think that if they paid off these debts they would get the mortgage. Mortgage Adviser 1 denies this.

Mr and Mrs B did pay off some debts. Mr and Mrs B thought all was going well with the remortgage as they thought all the documents were ready on 7 June 2017 which was some weeks before the anticipated completion of the remortgage which was 1 July 2017. But Mortgage Adviser 1 went on holiday and passed the file on to someone I'll call Mortgage Adviser 2. He also said he was going into 'semi-retirement'. Unfortunately Mortgage Adviser 2 wasn't able to help them – as he too was going on holiday - and nor was someone I'll call Mortgage Adviser 3.

Mr and Mrs B say they subsequently discovered Mortgage Adviser 1 was no longer authorised by the Financial Conduct Authority (FCA).

They have also been told by MAB that Mortgage Adviser 1 is no longer linked to it and hasn't been since 28 April.

Initially MAB rejected their complaint as it said Mortgage Advisers 1 and 3 were no longer linked to it. But it did agree to look at the complaint because Mr and Mrs B had shown it that they had paid off debts prior to 28 April.

When MAB looked at the complaint it rejected it and so did our investigator. Our investigator couldn't find any evidence to support the mortgage ever being agreed by any lender. He also didn't see that any additional debt had been created for Mr and Mrs B when they paid off one debt with money borrowed from another source.

Mr and Mrs B disagree. They say the fact that Mortgage Adviser 1 wasn't regulated should be relevant. They weren't ever given any cause for concern that they wouldn't get the mortgage by 1 July. And that their documentation should have been uploaded by Mortgage Adviser 1 before going on holiday. Furthermore they say MAB didn't properly supervise Mortgage Adviser 1. Nor did MAB tell it that Mortgage Adviser 1 was no longer its representative.

my provisional decision

I didn't agree with the investigator's recommendation and so I did a provisional decision.

In the provisional decision I said Mortgage Adviser 1's appointment as a representative of MAB terminated on 28 April 2017. And I'd seen an email from MAB to Mortgage Adviser 1 which made it clear that Mortgage Adviser 1 was no longer permitted to represent MAB and give advice on or arrange mortgage and protection products on behalf of MAB.

I realised that Mr and Mrs B had said MAB didn't inform them that Mortgage Adviser 1 was no longer a representative of it but I didn't think it needed to do this. I therefore thought that any actions by Mortgage Adviser 1 after 28 April 2017 can't fairly be a cause of complaint about MAB.

Paying off the debts happened before 28 April 2017 so I thought I could fairly look at that. Mr and Mrs B had a lot of help with their application from Mr B's father. This help was practical – sending documents through – and financial – he helped them reduce their debt by making them a loan. Having read Mr B's father's correspondence with MAB, Mortgage Adviser 1 and this service I thought it was clear he thought the mortgage would go through if the debts were reduced and that's why the debts were reduced. I also thought that Mr B's father hadn't understood what was going on all the time. I thought he was prone to jumping to conclusions – for example he seemed to have assumed Lender 2 was Lender 1's intermediary. I thought it was possible that the various breakdowns in communication have been caused by Mr B's father not actually being the client which adds an extra layer of complication. But in the end I concluded it was most likely Mortgage Adviser 1 didn't take the time to explain things clearly.

I said there wasn't a lot of information to go on to determine exactly what was said before the debts were paid off. There was an email from Mortgage Adviser 1 dated 2 March which referred to an agreement in principle with Lender 1. I think given the likelihood of Mr and Mrs B reducing their debt in anticipation of a mortgage being granted Mortgage Adviser 1 should have clearly set out the risks of following this approach. I didn't think he did. And I thought MAB could be fairly held responsible for this because this failure to warn Mr and Mrs B happened before Mortgage Adviser 1 ceased to be one of its representatives.

I'd also seen emails from Mortgage Adviser 1 which makes it clear that he and MAB knew that he would cease to be a representative of MAB before the mortgage for Mr and Mrs B was intended to be completed. I didn't think Mortgage Adviser 1 needed to tell Mr and Mrs B about his change of status in the first instance. But when it became clear that things weren't progressing swiftly I thought he did need to make them aware that he was running out of time. Whilst he did make some attempts to pass Mr and Mrs B on to other mortgage advisers his plans weren't successful. And I thought that this was because – whilst he was still a MAB representative - he hadn't planned his handover of their file well enough. I thought MAB could fairly be held responsible for the inadequate handover of this file.

I didn't think it would be fair to expect MAB to pay Mr and Mrs B a sum equal to the amount they borrowed from Mr B's father to pay off their debt. They had, of course, had the advantage of reduced non-family debt. It was difficult to come up with a figure adequately to compensate them. But I thought a payment of £300 would be fair. I thought this would fairly compensate them for the stress and embarrassment caused to them that they were unable to repay Mr B's father as they had hoped. I couldn't look to compensate Mr B's father for the fact that he doesn't have access to £10,000 anymore as he wasn't the consumer in the complaint.

As things turned out Mr and Mrs B couldn't get a mortgage with a provider at a satisfactory rate. I thought it was therefore possible that their mortgage application was always likely to produce an unsatisfactory outcome.

But I thought Mortgage Adviser 1 – whilst a representative of MAB – failed to put in place a proper handover of files and so Mr and Mrs B were caused unnecessary stress and upset before they found this out. For this I thought it would be reasonable to expect MAB to pay them another £300 compensation.

Mr and Mrs B had said that Mortgage Adviser 1 was unregulated and this is proof that he acted unprofessionally. This complaint looks at the time whilst Mortgage Adviser 1 was with MAB. During this time I'm satisfied he was regulated.

responses to my provisional decision

MAB didn't respond.

Mr and Mrs B's representative sent a five page letter. The main points in this letter are:

- I've referred to some documents that they haven't seen
- I've said an adviser while regulated is not legally bound to notify clients should they no longer be regulated or registered to give financial advice
- They have recently discovered that MAB has an office not more than one mile from Mortgage Adviser 1's former office so Mortgage Adviser 1 should have referred the application to that office
- They feel MAB should have told them about this office so they could discuss the problem face to face
- They raise issues about what happened after Mortgage Adviser 1 ceased to be appointed as a representative of MAB
- They reiterate that MAB initially refused to investigate the complaint
- They think after Mortgage Adviser 1 ceased to be a representative of MAB it clearly failed to protect their interest by allowing Mortgage Adviser 1 to continue to be "in charge" of their file, when in fact, and they presumed in law, the file was, in fact, the property of MAB as the employer of Mortgage Adviser 1
- They refute my statement that Mr B's father jumped to conclusions or hadn't understood what was going on all the time – they refer to an email dated 5 April 2017 which they say shows I'm wrong
- They summarise what happened after Mortgage Adviser 1 ceased to be an appointed representative of MAB
- They say the loans had to be repaid as part of the remortgage application at Lender 2's specific request

- It is unequivocally clear; Mortgage Adviser 1 didn't take the time to explain things clearly
- They feel the paying off debts was a "mere formality"
- They don't agree with me that there wasn't a lot of information to which to determine exactly what was said before the debts were paid off and refer to emails and to calls where they were told all was on track for the drawn down of the 1 July 2017
- They refer to Mr B's father's experience of retiring from work and what happened to his work after he retired
- They feel MAB has a legal duty to notify Mr and Mrs B of the change of legal status and the lack of protection from such failures of an unregistered and therefore unregulated adviser continuing to complete a mortgage
- They feel compensation in the region of £1500 to £2000 would be more appropriate for all the errors
- They don't agree with my view that it was possible their application was always likely to produce an unsatisfactory outcome
- They think it should be appreciated and taken into account, the stress this has had on Mr and Mrs B in not being able to repay such a large debt and the stress and worry this has caused Mr B's father who is retired, on limited income by way of a small pension and, being left with a mortgage
- They feel an email from MAB regarding changes in data protection law dated 15 May 2018 shows MAB has a continuing responsibility to them

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I said in my provisional decision this is a complaint about MAB. Actions of other parties will be mentioned in this decision but I want to be clear that my role here is only to consider whether MAB has let Mr and Mrs B down. I can only look at what happened after Mortgage Adviser 1 ceased to be an appointed representative of MAB as evidence about what should have been known or done whilst he was an appointed representative of MAB.

In my decision I did refer to documents that hadn't been seen by Mr B's father. These relate to the ending of Mortgage Adviser 1's appointment as a representative of MAB. They contain confidential information about Mortgage Adviser 1 and his arrangements with MAB. I don't think Mr B's father needs to see these in order for there to be a fair decision in this case.

I didn't say that a mortgage adviser while regulated is not legally bound to notify clients should he no longer be regulated or registered to give advice. I said that Mortgage Adviser 1 didn't need to tell Mr and Mrs B he was going to cease to be an appointed representative of MAB at the outset. I also didn't think it was MAB's responsibility to tell Mr and Mrs B, Mortgage Adviser 1 was no longer an appointed representative. As I've already said this complaint looks at the time whilst Mortgage Adviser 1 was with MAB. During this time I'm satisfied he was regulated.

Mr B has referred to his personal experience on retiring saying the files he'd worked on belong to his firm. Due to the nature of Mr B's work I don't doubt this. But Mortgage Adviser 1 was neither an employee nor a partner of MAB he was an appointed representative and what happened to clients after the termination of the contract appointing him is a matter for the contract provisions. I can understand why Mr B's father might wish that the file had been handed to another MAB office - especially as one was so close – but I don't think MAB was required to ensure this happened. Nor do I think it was required to tell Mr and Mrs B that Mortgage Adviser 1 was no longer an appointed representative of it.

Whilst it might have been helpful to have face to face discussions about the complaint a business isn't required to handle complaints in this way and so I can't agree that MAB did anything wrong by not offering to meet at the nearby office.

I appreciate MAB refused to look at the complaint initially. I think this was wrong. But it accepted this and I won't be ordering it to do anything further about this aspect of the complaint.

Mr B's father has referred to an email dated 5 April which mentions the word 'intermediaries' and the name of Lender 2 together. I can understand why he might have concluded that this meant Lender 2 was an intermediary for Lender 1 but it isn't the case. It merely refers to the fact that this is the part of Lender 1's operation that deals with mortgage intermediaries like MAB.

Mr B's father has said the loans had to be repaid as part of the remortgage application at Lender 2's specific request. This doesn't, however, guarantee the application would be successful. As I said before I think Mortgage Adviser 1 should have clearly explained – before debts were paid off by Mr B's father - that there was a risk that the mortgage might not go ahead and that Mr and Mrs B wouldn't be in a position to repay Mr B's father. The fact that Mr B's father feels that paying off the debts was a "mere formality" suggests things weren't clearly explained by Mortgage Adviser 1.

Mortgage applications are never certain and given Mr and Mrs B's history of debt I don't think it could be assumed that their mortgage application would definitely be successful. I know Mr B's father disagrees with me and thinks the application would have been successful if it had been made when it should have been but I'm not persuaded this is the case and in any event this was after Mortgage Adviser 1 ceased to be an appointed representative of MAB.

I appreciate the stress caused to Mr and Mrs B and the embarrassment. But I think the compensation set out in my provisional decision is the right amount. As I said I can't make an award for anything suffered by Mr B's father as he is not the consumer. And although I appreciate it would be difficult for Mr and Mrs B to see Mr B's father's situation I think the award set out in the provisional decision fairly reflects this.

I don't agree that the email relating to data protection provides any evidence other than that MAB holds data relating to Mr and Mrs B which Mr and Mrs B knew anyway.

my final decision

My decision is that I uphold this complaint. I order Mortgage Advice Bureau Limited to pay Mr and Mrs B £600.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 12 October 2018.

Nicola Wood
ombudsman