

## The complaint

Ms M complains that Mortgage Advice Bureau Limited (MAB) mis-sold her mortgage.

## What happened

In April 2020, Ms M contacted MAB for advice on a re-mortgage as her current mortgage product was coming to an end.

She says in an initial telephone appointment she explained that she was looking for the best possible price for her re-mortgage and that she was considering renting her home out in the next couple of months. She says she also explained she was potentially moving abroad in approximately two years and therefore would require a mortgage with reasonable letting terms and flexibility. Ms M followed this up in writing on 16 April 2020.

MAB says a further call took place on 20 April 2020 where Ms M's circumstances and goals were discussed in more detail. And that using the information it obtained in this call, it produced an initial mortgage illustration for a capital repayment mortgage with a lender. There were concerns that the lender may add an additional 1% onto the agreed interest rate if Ms M asked to let out the property – but MAB later confirmed that the lender had said if consent to let is granted, Ms M would be able to keep the residential rate.

Ms M asked further questions around the monthly payment being higher than her current mortgage and the exit fees associated with both fixed interest rate and tracker rate products. She eventually agreed to proceed with the mortgage on 29 May 2020 following sufficient answers from MAB.

At this point MAB checked to ensure the mortgage Ms M wanted to proceed with still had the best interest rate for her. It identified that it didn't and that a different lender now had a lower interest rate. MAB produced an illustration for the new lender and Ms M queried about consent to let still being available without hassle, as this was the main factor at present. On 3 June 2020 MAB confirmed the new lender wouldn't increase the rate if consent to let was agreed. Ms M agreed to proceed with the mortgage on 8 June 2020.

On 8 June 2020, MAB produced its Mortgage Suitability Report – *Your Mortgage Requirements* – outlining its recommendation and this was sent to Ms M. The lender approved the mortgage and on 16 June 2020 issued Ms M with a mortgage offer. Unfortunately, Ms M's name was incorrectly spelt on the mortgage offer, so she contacted MAB to have this amended on 22 June 2020.

MAB contacted the lender on 23 June 2020 to have the offer amended. In the meantime, Ms M spoke with the solicitors and lender directly. She explained to MAB she had been advised that due to the incorrect spelling of her name by MAB, a valuation needed to be arranged as a direct consequence. Ms M arranged a survey for 1 July 2020 and following this a new mortgage offer was issued on 10 July 2020 with the re-mortgage completing on 12 August 2020.

In August 2020, Ms M tried to switch her mortgage to consent to let but was informed by the lender that this wouldn't be possible. Ms M has said that the lender explained the mortgage she took out doesn't allow changes for the first six months. Unhappy, Ms M raised a complaint with MAB as she felt her mortgage had been mis-sold.

MAB responded explaining that it didn't think the mortgage had been mis-sold. It said the evidence on file indicated that Ms M didn't intend to let her property immediately and the lender does offer consent to let as Ms M required – subject to an application. It said had it been clear she wanted to let the property immediately, it would have arranged a buy to let mortgage instead. It acknowledged the incorrect spelling of Ms M's name had caused delays. In recognition of this, it offered £131.68 for the additional costs incurred and £250 for any distress and inconvenience caused.

Our Investigator considered the complaint and didn't think MAB had acted fairly. They concluded that MAB had mis-sold the mortgage, as it was clear Ms M always intended to rent the property following the new mortgage completing. And it hadn't informed Ms M of the six-month restriction before consent to let could be agreed or the associated fees. They said because of this Ms M had lost out on potential rental income. In resolution of the complaint the Investigator recommended that MAB:

- Pay Ms M the expected profit per month from the rental income from September 2020 until the end of the fixed rate mortgage product.
- From this amount deduct the costs involved in renting the property out.
- And then pay 8% simple interest on the final amount for Ms M not benefitting from the funds.
- Pay £500 compensation for the distress and inconvenience.

MAB disagreed and asked for an Ombudsman's decision.

I issued a provisional decision for this complaint on 5 May 2022 where I said:

*"Ms M says that during an initial telephone call with MAB she made it clear that she was looking for the best possible price for her re-mortgage and that she was considering renting her home. Therefore, she says she was looking for a mortgage with reasonable letting terms and flexibility.*

*MAB says that following the initial telephone call a subsequent call took place where more detailed discussions were had. It says that during this call Ms M advised that she was considering letting the property due to her long-term travel plans but due to external factors it may not be realistic in her original timeframes. It says Ms M confirmed she was living between her home and her partners, but she did not expect her residential status to change until 2021 at the earliest.*

*Unfortunately, I've not been able to listen to either of the calls outlined above, so I can't say with any certainty what was discussed. However, I have been provided with various documents from the time Ms M approached MAB to arrange a mortgage for her.*

*I've seen a copy of the email Ms M sent MAB on 16 April 2020 following her initial telephone call. In this email she explains she has been giving consideration to renting the property out in the next couple of months. However, she explains that it is all tentative at this stage, but it would be helpful to consider mortgages with reasonable consent to let terms and not exorbitant additional interest. She also explains it is likely she will move abroad in the next couple of years – if not before – so would like decent flexibility in the mortgage as well.*

*I've also seen copies of emails between Ms M and MAB when discussing the different mortgages. In these there are various discussions around consent to let and if Ms M applied to let her property, whether her interest rate would increase – which MAB confirmed would not be the case and she would retain her residential rate.*

*MAB has also provided a copy of its Mortgage Suitability Report - Your Mortgage Requirements. This was sent to Ms M before she took out the mortgage and asked her to check the details to ensure they were correct, as if they weren't it could affect MAB's recommendation. This document outlined that Ms M intended to remain in the property as her main residence and if in the future she decided to let the property she would need permission from the lender. It also detailed that Ms M's preferences for a new mortgage were to fix the monthly payments to avoid any rate increases, have an initial rate on the mortgage for no longer than two years and to incur no legal fees and valuation fees to keep the upfront costs down.*

*Having reviewed these documents, I think it's clear that Ms M had the intention of eventually renting the property. Whilst the conversations around consent to let focussed solely around whether there would be an increase to the interest rate, I also think MAB had a duty of care to ensure Ms M fully understood when she would be able to apply for consent to let – especially considering the emphasis she had put on the terms during her correspondence with MAB. And I can't see that MAB made it clear that the lender it was recommending would not allow consent-to-let until six months had passed. With this in mind, I think Ms M should be compensated for the unclear information she was given with regards to consent to let by MAB. But I don't agree that Ms M should receive the loss of rental income she says she has suffered because of this.*

*Whilst Ms M may not have been able to apply for consent to let as soon as she had intended, she still had the option to move forward with letting the property following the initial six-month period. However, Ms M chose not to do this, and I don't think it would be fair or reasonable to hold MAB responsible for any potential loss of rental income. I say this because consent to let firstly needs to be approved by the lender, which isn't guaranteed, and there is no certainty that Ms M would have either been able to find tenants for the property or rent it for the amount she has indicated she may have been able to.*

*I understand that Ms M has also explained that if she had been given correct information – that she couldn't apply for consent to let for six months – she would have sought a buy to let mortgage and therefore been able to rent out the property sooner. However, I disagree because I think it's clear from the documentation and correspondence at the time that Ms M wanted to avoid an increased interest rate on her mortgage. So, I think it unlikely she would have chosen the more expensive buy to let option.*

*Ms M has also mentioned an annual fee of £225 that the lender charges to anyone who has consent to let agreed. Again, I think MAB should have provided information to Ms M about this when taking the mortgage out, but I don't think it is unreasonable that she pays this if she decides to proceed with letting out the property going forward. This is a fee imposed by the lender and would always have been payable. The alternative would have been for Ms M to apply for a buy to let mortgage, which as I have explained, I don't think it likely Ms M would have done.*

*It should be noted that as part of Ms M's submission to our service she explained that during a recent phone call with the lender, it explained that there were certain restrictions with letting a property, and that if Ms M wanted to let the property there would be an increase to the interest rates – which she argues is contradictory to what she was told by MAB and further supports the mortgage was mis-sold. Having read Ms M's submissions and the submissions from the lender to both our service and MAB, I'm satisfied that the lender*

*correctly explained to MAB that if Ms M changed her mortgage to consent to let the interest rate would stay the same. Having read the information Ms M has provided this relates to a buy to let mortgage which would be an entirely separate application and mortgage from the lender agreeing to consent to let.*

*I also note in Ms M's submissions to our service that she mentioned the need for the mortgage to be flexible and that it's not because it has an early repayment charge (ERC). Having reviewed the emails between Ms M and MAB before the mortgage was agreed, I can see she emailed MAB to enquire about the ERC so she could confirm her understanding and weigh up the benefits of a fixed rate and a tracker rate. MAB confirmed her understanding, so I'm satisfied Ms M was aware of the different options available to her before making an informed decision to proceed with a mortgage product with an ERC.*

*MAB has offered £250 compensation for any distress and inconvenience caused. I think this is fair and reasonable in the circumstances of the complaint and takes into account the inconvenience Ms M has suffered by finding out her plans to let the property would need to be delayed – and that there would be a fee to do it.*

*MAB have also offered Ms M £131.68 that she requested for the additional costs she says she incurred because of the delays with the application. MAB don't dispute that problems with the application caused delays, so I think it's offer to pay the amount Ms M says she incurred is reasonable."*

I invited both parties to let me have any further comments and evidence they wanted to raise by 2 June 2022.

MAB responded accepting my provisional decision.

Ms M didn't agree to my provisional decision and provided a detailed submission outlining her reasons why. I won't detail every point Ms M included in her submission but have summarised below the points which I consider are relevant in reaching a fair and reasonable outcome to this complaint.

She said she didn't recall the second more detailed call with MAB taking place and disputes the contents of the call as it can't be listened to. Therefore, she disputes what MAB outlined was said in the call with regards to her not changing her residential status until 2021.

Ms M disagreed that she purposefully took a residential mortgage as it had the best interest rate and said she was always clear of her intention to secure a product which met her current needs at the time of inception – residential – and that she was always clear about her need for suitable flexibility to change to buy to let in the near future. Ms M refuted that she would not have initially sought a buy to let mortgage and rented the property sooner on the basis it was more expensive. She also disputed the suitability report as it was inaccurate and didn't represent the conversations she had at the time with MAB.

She said she stated to MAB on 3 June 2020 that '*consent to let was the main factor at present*' and that MAB hadn't provided her with correct information with regards to the six month passage of time needed before consent to let could be granted. She said she also wasn't told that consent to let would need to be approved by the lender, which wasn't guaranteed. Therefore, she didn't feel the compensation offered fairly compensated her for this failing and the clear mis-selling of her mortgage.

Ms M explained she didn't proceed with letting out the property due to obligations and further financial outlay which she hadn't budgeted for, including the risk of redundancy from her employer and an unknown personal economic circumstance. She said because of these

reasons she was left with no option but to put the flat up for sale – explaining the mortgage had mis-sold. Ms M also said she provided contemporaneous documentation which illustrate the amounts the letting agency said she could achieve by letting the property out – and that the property fell in a desirable area with buoyant and high monthly rental. Therefore, she said it was probable she would have found tenants. She also said she was further mis-sold her mortgage because MAB didn't make her aware of the fee the lender would impose if she were to apply for consent to let.

Ms M also raised concerns about the information she was given by the lender with regards to consent to let. She said that she was informed by the lender that the interest rate would increase by 0.75% if she were to apply for consent to let and it was agreed

She also explained she had clearly asked for the mortgage to be flexible and the end product wasn't. As such she has incurred an ERC and feels this should be refunded to her along with an increase to the compensation already offered to £500 – giving a total settlement of £2,000.

### **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.

In my provisional decision I explained that Ms M says that during an initial telephone call with MAB she made it clear that she was looking for the best possible price for her re-mortgage and that she was considering renting her home. Therefore, she says she was looking for a mortgage with reasonable letting terms and flexibility.

I also explained that MAB says a further telephone call took place where more detailed discussions were had. It says that during this call Ms M advised that she was considering letting the property due to her long-term travel plans, but because of external factors it may not be realistic in her original timeframes. MAB says that Ms M confirmed in this call that she was living between her home and her partners, but she did not expect her residential status to change until 2021 at the earliest.

Ms M says she doesn't recall the second call with MAB and disputes the content of the call as it can't be listened to – specifically what MAB has said about her residential status not changing until 2021.

As I said in my provisional decision, I've not been able to listen to either of the calls outlined above, so I can't say with any certainty what was discussed. This means I can't confirm what either Ms M or MAB said happened in either call. However, as I've said, I have been provided with supporting documentation from the time of the application.

Following the initial call, Ms M sent a follow up email on 16 April 2020 confirming what she was looking for with her mortgage. I've read this email and Ms M explains that she is looking for the best possible price and has given *some* consideration to renting the property out within the next couple of months. She says it is all tentative at this stage but that it would be helpful to consider a mortgage with reasonable consent to let terms and not exorbitant additional interest. She goes on to explain that it is likely she will move abroad in the next couple of years, if not before, so would like decent flexibility in mortgage products such as no penalty for paying earlier.

Having read this email, I don't think Ms M gave any definitive plans that she would be looking to let the property out immediately after securing a mortgage – or within the first six months. I agree that she gave indication she was considering letting the property, so would

like a mortgage with reasonable consent to let terms, but she said her plans were tentative – in other words not certain or fixed. I've also read the emails that Ms M and MAB have provided in relation to her application. I do think it's clear that Ms M had the intention of *eventually* letting the property, as much of the conversations focussed solely around consent to let and whether there would be an increase to the interest rate. However, in none of the emails before completion of the mortgage does Ms M give an indication she was looking to let her property out immediately after securing a mortgage – or within the first six months. She also doesn't mention the need for flexibility to change her mortgage to buy to let in the near future.

MAB has also provided the fact find, fact find notes and Mortgage Suitability Report – *Your Mortgage Requirements* – for Ms M's application. I understand that Mr M disputes the content of the Mortgage Suitability Report as she feels it is inaccurate and didn't represent the conversations she had. However, the Mortgage Suitability Report and the fact find are documents which were completed at the time of the application, and I've seen nothing to suggest they are inaccurate as Ms M has suggested.

In addition, the Mortgage Suitability Report was sent to Ms M on 10 June 2020 (after Ms M's initial call) and MAB asked that she read the document to ensure she fully understood the recommendation it was making and to check the details were accurate – as if the detail were inaccurate, it could affect MAB's recommendation. I would expect any customer to read this report as it's an important document which sets out the reasons why a mortgage is being recommended. If there was any inaccurate information in the report as Ms M has suggested, I would have expected her to raise this at the time before agreeing to take out the mortgage.

The Mortgage Suitability report outlined that Ms M intended to remain in the property as her main residence and if in the future she decided to let the property she would need written permission from the lender to do so. It also detailed Ms M's preferences for a new mortgage were; to fix the monthly payments to avoid any rate increases, have an initial rate on the mortgage for no longer than two years and to incur no legal fees and valuation fees to keep upfront costs down.

The fact find notes indicate that Ms M wanted to fix the mortgage for two years as she may sell after this time and buy with her partner. It details that Ms M is currently living between her flat and his home so wanted a degree of flexibility, but if that doesn't work out she would not look to sell and re-mortgage the property. It also detailed that Ms M said she may ask for consent to let after a year if she decides to move into his property and that MAB explained she would need to apply to the lender to do this.

I think it's clear from Ms M's correspondence that she had the intention to let out the property at *some* point in the future. However, as I've said there is nothing to indicate she told the advisor this would be within the first six months, which I think is further supported by the notes taken at the time with the fact find, that indicates she gave a timeframe of a year. The fact find and Mortgage Suitability Report also support that she was told she would need permission from the lender to do this as well.

I understand that Ms M had also said that the mortgage didn't meet her needs as it has an early repayment charge (ERC) – therefore isn't flexible. As mentioned, the Mortgage Suitability Report outlines Ms M's preferences for a mortgage was to fix her mortgage payments to avoid any rate changes and also have an initial deal for no longer than two years. I've also read correspondence between Ms M and MAB where she enquires about the ERC on the mortgage to confirm her understanding so she can weigh up the benefits of a fixed rate and a tracker rate – which MAB confirmed was correct. Whilst I appreciate that Ms M would incur an ERC if she exited the mortgage early, I'm satisfied she was aware of the different options available to her before making an informed decision to proceed with a

mortgage product with an ERC – and that the product chosen meets her preferences outlined above.

Based on the above I think MAB sourced a mortgage which was suitable to the preferences Ms M had outlined she wanted from a mortgage. More specifically, the mortgage had consent to let terms and whilst she may not have been able to apply for this when she wanted, immediately after the mortgage, I've found nothing in the evidence to suggest she made it clear to MAB she would be looking to let the property out in the first six months – the documentation actually suggests otherwise.

I've also found no evidence to suggest MAB made her aware she couldn't apply for consent to let in the first six months, and that there would be a fee, before she proceeded with the mortgage. Whilst I don't think this means her mortgage was unsuitable, I do think Ms M should be compensated for not being told this information initially, as it's clear she's had a loss of expectation and been caused distress and inconvenience because of this. As Ms M didn't proceed with letting out the property, she has not incurred the annual £225 fee the lender charges to anyone who has consent to let agreed – therefore she hasn't suffered a loss associated with the fee. MAB has offered £250 which I think is fair and reasonable in the circumstances of the complaint as it takes into account the inconvenience Ms M has suffered by finding out her plans to let couldn't happen in the first six months of her mortgage – and that there would be a fee if she did apply.

I understand that Ms M has said she didn't proceed with letting out the property due to unforeseen personal economic circumstances, so ended up having to put the property up for sale. I also appreciate that Ms M has provided documentation illustrating what she could potentially have achieved by letting the property out. However, in order to consider making an award for loss of rental I would first need to be satisfied the mortgage was mis-sold – which as I've said I don't think it was.

Ms M has also raised concerns about the information she was given by the lender with regards to consent to let. She said the lender told her that the interest rate would increase by 0.75% if she were to apply for consent to let and if it was agreed. As explained in my provisional decision, I've reviewed Ms M's submissions and I'm satisfied what she was told about interest rates increasing relates to a buy to let mortgage, not consent to let. This has been further supported by information from her lender where they have confirmed that her interest rate would not increase if it agreed to consent to let.

As outlined in my provisional decision, MAB have also offered Ms M £131.68 that she requested for the additional costs she says she incurred because of the delays with the application. MAB has agreed to pay this amount and don't dispute that problems with the application caused delays. I think this is reasonable in the circumstances.

### **My final decision**

My decision is that the offer by Mortgage Advice Bureau Limited to pay £131.68 for additional costs and £250 for the distress and inconvenience caused is fair and reasonable in the circumstances.

Mortgage Advice Bureau Limited should pay these amounts to Ms M if not already done so. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 12 July 2022.

Robert Woodhart  
**Ombudsman**

