

## **The complaint**

Mr C and Miss L complain that an appointed representative of Mortgage Advice Bureau (MAB) Limited provided unsuitable advice.

## **What happened**

Mr C and Miss L approached MAB to help them obtain a mortgage for their first property purchase.

Mr C and Miss L had reserved a new build home with a purchase price of £270,000. They intended to pay the deposit through a combination of personal savings, which included money held in a Help to Buy ISA, and a gift from Mr C's mother.

MAB carried out a fact find with Mr C and Miss L before recommending they take out a repayment mortgage with a lender I shall refer to as T. The mortgage was for £232,700 and set to run over a term of forty years.

A few weeks before the property sale was due to complete, Mr C and Miss L became aware that they did not qualify for the 25% savings bonus from their Help to Buy ISA. The ISA scheme specified that the 25% bonus would only be paid for property purchases up to £250,000. As Mr C and Miss L's chosen property had a higher purchase price, they were not eligible for the bonus.

Mr C and Miss L say they had been relying on this bonus, which they thought would amount to £3,000, to assist with their property purchase. So, unhappy to discover that they would not be receiving this so close to completion of their sale, Miss L complained to MAB. In her email to MAB she set out that as a result of not receiving the expected bonus, they had to use "much needed savings to finalise our agreement, leaving us with less to spend on furnishings and necessary items". Miss L asked MAB to compensate them by covering the £3,000 they were expecting from their ISA.

Miss L says she spoke to the managing director of MAB who was rude, laughed at her and said he had shareholders to think of so would not be issuing any form of compensation.

MAB followed up by issuing its final response to the complaint. This letter says that as the Help to Buy bonus was not being used towards the property deposit and was instead being used for furnishing, their adviser would not be expected to provide advice on how the ISA worked – particularly as this was a savings product provided by another supplier.

Unhappy with MAB's handling and response to their complaint, Mr C and Miss L brought their complaint to our service. In doing so, they have said the £3,000 bonus was needed to make up the full deposit amount and they had to rely on family members taking savings from their pensions to cover the difference. They've explained the whole experience made their house purchase a stressful and worrying time.

I issued a provisional decision in October 2023 setting out that I intended to uphold the complaint in part.

The evidence available shows MAB had been put on notice that Mr C and Miss L were intending to use the ISA bonus toward their deposit. As such, in its advisory role, I thought it ought to have done more to assure itself and its clients that they could meet the required deposit amount and could do so via valid means. However, I was not persuaded that had MAB notified Mr C and Miss L at outset that they would not be eligible for the bonus, that they would have pulled out of the house purchase. Instead, given the evidenced amount of their savings and that they had already found the house when they entered into the fact find with MAB, I thought they would've still gone ahead – minus the £3,000. For this reason, I did not recommend that MAB pay the £3,000 compensation Mr C and Miss L are seeking.

I did acknowledge that MAB's actions had directly caused Mr C and Miss L to experience undue distress and inconvenience. So, I recommended that it pay them £200 to recognise this.

I invited both parties to send me any additional information or comments they wanted me to consider by November 2023.

MAB responded disagreeing with my intention to uphold the complaint in part. In summary, it said:

- Its advisers are not responsible for advising on external products held by its clients (such as the Help to Buy ISA) and that our service had given it assurances on this point previously.
- Its adviser did tell Mr C and Miss L to speak to their solicitor about the bonus so to suggest it did not do this and to make an award on this basis is in contradiction to other decisions issued by this service.
- It is concerned that in the absence of a call recording, I had chosen to comment on Miss L's interactions with MAB.

Mr C and Miss L responded to my decision with several comments. I have summarised the key points below:

- £200 is an inappropriate amount of compensation given the acute stresses endured over the past year by Mr C, Miss L and their family members.
- It is incorrect to suggest that the Help to Buy Bonus was to be used for anything other than the deposit. Referring to furnishings and spending post completion is irrelevant as they needed all their savings and the bonus to meet the required property deposit.

- It is wrong to say they had money in personal savings accounts *plus* the gifted deposit. The £17,000 being gifted by Mr C's mother was included in their personal savings and was not in addition to.
- They maintain that they would have abandoned the property purchase had they been notified that they were ineligible for the bonus. They had offered on a number of properties before this one and had been in contact with their adviser at MAB for several years prior to the advice in question. They would have swapped to a cheaper property within the development if it meant they would be eligible for the bonus.
- There was more than one gifted deposit form as the adviser had to amend it to include the £3,000 bonus they were anticipating.

As both parties have responded and the deadline to do so has now passed, it is appropriate for me to issue my final decision.

### **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 doing so, I am required by DISP 3.6.4 R to take into account:

*(1) Relevant:*

*(a) law and regulations*

*(b) regulators' rules, guidance and standards;*

*(c) codes of practice; and*

*(2) (where appropriate) what [I consider] to have been good industry practice at the relevant time.*

I also focus on what I think is material and relevant to reach a fair and reasonable outcome. So, although I have read everything that has been supplied to me, I may not address every point that has been raised.

Having done all that, I think this complaint should be upheld in part. I realise Mr C and Miss L were seeking more than what I am awarding in this decision. So, I appreciate this will be disappointing for them. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

The first thing for me to consider is whether the facts of this case mean MAB ought to have told Mr C and Miss L that their eligibility to receive a bonus from their Help to Buy ISA had restrictions relating to the associated property price – or at the very least, directed them to their solicitor at outset.

In this case, I do think MAB ought to have either directed Mr C and Miss L to their solicitors when it first became aware of their intention to rely on and use the ISA bonus or taken steps itself to ensure Mr C and Miss L's intended use of the bonus would mean they could meet the required deposit amount.

There appears to be a dispute over whether Mr C and Miss L were dependent on receiving the ISA bonus to make up the full deposit amount. However, putting this to one side, I can see from the contemporaneous notes that the adviser was aware that some of the savings were coming from a Help to Buy ISA and that Mr C and Miss L were still intending on contributing to those savings until completion. The adviser makes a note of the total amount they hoped to save and refers to the fact that they were also expecting to receive the bonus.

Given this was in the context of Mr C and Miss L's deposit and how they would meet the required amount, I think this was enough to put MAB on notice that Mr C and Miss L were expecting to receive their Help to Buy bonus. And as their adviser, I think MAB had a responsibility to ensure Mr C and Miss L had the means to meet the required deposit – and ought to have directed them to either check the eligibility criteria themselves or signposted Mr C and Miss L to their solicitor to confirm said eligibility at this stage.

MAB itself has said that its adviser would have commented on the ISA had it thought that the savings product was being used toward the deposit – but because it did not think it was (given Mr C and Miss L's other funds) it did not do so on this occasion. I think this was an error on MAB's part given what the notes show us its adviser knew, or ought to have known at the time.

In its response to my provisional decision, MAB says its adviser did tell Miss L that she should confirm the details of the ISA with her solicitor. But this was several weeks later and in response to the specific query of when the bonus would be paid – not whether they would be eligible to receive the bonus. So, this does not change my conclusions on this point.

As I set out in my provisional decision, when considering a complaint where I find a business has made an error (as is the case here), I then need to decide what I think would most likely have happened had MAB given Mr C and Miss L correct information at the right time – any compensation would be focused on trying to put Mr C and Miss L in the position they would have been in had this happened.

Mr C and Miss L say they would not have gone ahead with their chosen property and instead would have looked for a house that fell within the £250,000 limit to ensure they received the £3,000 bonus as set out in the ISA terms and conditions. As such, they feel that the correct approach to compensation in this case, is to award the full £3,000 they were expecting from the ISA.

Mr C and Miss L have elaborated on this point since my provisional decision and said that they had offered on several properties before this one without going ahead with the sale – so this would not have been any different. In addition, the same development they were buying within had cheaper houses which they would have offered on instead had they been made aware of the ISA limit. They also strongly dispute that they had a surplus of savings – instead, they maintain that they were dependent on the bonus to meet their required deposit amount.

I have carefully considered Mr C and Miss L's comments. However, having done so, I remain of the opinion set out in my provisional decision.

The contemporaneous evidence of funds collated by MAB for T shows that Mr C and Miss L already held £27,421 in personal savings by August 2022 with the sale due to complete in the winter of that year. There is also a gifted deposit form which shows Mr C's mother was providing £17,000. Taking the total amount of combined savings and gift to £44,421.

Mr C and Miss L dispute this and say that the £27,421 includes the £17,000 gift and it is not in addition to (they've also suggested the form was altered to take into account the £3,000 bonus). But if this were the case, Mr C and Miss L would be short of just under £7,000 for their required deposit – even after taking into account the £3,000 bonus they were expecting.

I can also see that in one of Miss L's emails to MAB, she set out that the loss of the expected £3,000 means they had to use "much needed savings" to finalise the agreement, leaving them with "less to spend on furnishings and necessary items."

In weighing up the evidence provided to this service, it appears Mr C and Miss L had sufficient funds to complete on their chosen property without the ISA bonus. Taking this into account in addition to them having already chosen their house and started the sales process I am not persuaded they would've pulled out of the sale and changed property in order to receive the £3,000 bonus.

Turning to the impact MAB's actions have had on Mr C and Miss L, I accept that discovering a few weeks prior to completion that they would not be receiving £3,000 which they had been expecting and planning to receive would be distressing. House purchases are often trying times and while Mr C and Miss L do not appear to have needed the bonus in order to afford their property, I find it very plausible that they were counting on that money.

Such distressing news and loss of expectation at such a late stage could have been avoided had MAB directed Mr C and Miss L to their solicitors as soon as it was notified that they were intended to use the ISA scheme – or gone further and notified them itself that the ISA likely had certain criteria that must be met in order for a bonus to be received.

Mr C and Miss L say MAB compounded the issue by being rude and unprofessional when they raised the issue. We have asked MAB on a number of occasions to provide a copy of the call between Miss L and MAB to no avail. In response to my provisional decision, it said such calls are not recorded so it doesn't think I should make a finding on this interaction.

The absence of a call recording does not result in this complaint point falling outside of my jurisdiction or one that I should dismiss without considering its merits. Instead, where evidence is incomplete or contradictory, I must weigh up the available evidence and reach a finding on what I think is most likely to have happened.

In this case, Miss L has given consistent testimony about what was discussed in the call. I have not been provided with any contemporaneous evidence to discount or contradict what she says occurred and MAB apologised for its service falling below its expected standard on this point. So, in weighing up the available evidence, while I can't be certain of what was said between the two parties, I find it plausible that the level of service provided by MAB was below the standard I would expect. Given this occurred at what was already a fairly stressful time for Mr C and Miss L, I think this contributed to the level of distress and inconvenience they experienced.

Taking this into account, alongside the loss of expectation they experienced at such a late stage, I am going to direct that MAB pay £200 in compensation to Mr C and Miss L.

I am aware Mr C and Miss L have referenced the distress experienced by their family members. But I am unable to issue compensation to third parties who are not an eligible complainant.

**Putting things right**

MAB should pay Mr C and Miss L £200 in recognition of the distress and inconvenience they have experienced as a result of its actions.

**My final decision**

For the reasons I have set out above, I uphold this complaint and direct Mortgage Advice Bureau Limited to compensate Mr C and Miss L as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss L to accept or reject my decision before 4 January 2024.

Lucy Wilson  
**Ombudsman**