

Mum and Dad need to get with it

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Parents who help their children get on the property ladder are being urged to adopt a more cautious approach when it comes to handing over the cash.

Faced with high rental costs and soaring property prices, more parents are dipping into savings or releasing equity from their own property to support the next generation.

Research by [Legal & General](#) estimates that last year a massive £6.3bn was provided by the Bank of Mum and Dad (or BOMAD as it's known). The figure effectively makes BOMAD the 11th largest mortgage lender in the UK, based on rankings compiled by [UK Finance](#), the collective voice for the banking and finance industry.

- 59% received the money as a gift with no requirement to pay it back
- 14% received a mix of gift and loan
- 6% were charged interest
- 8% wanted an equity stake in return for their contribution to the property

With the average contribution of families and friends now standing at a massive £24,100 (£31,000 in London), it pays to adopt a cautious approach. The law in this area is difficult and can lead to expensive disputes, as there are presumptions in law that will apply in the absence of evidence to the contrary. If a parent gives money to one of their children without documenting or agreeing the basis for the payment (i.e. a loan, gift or something else), there is a legal presumption (known as the presumption of advancement) that the money was gifted.

Whilst parents may be happy to support their own children, if the contribution ends up with someone outside of the family, there is scope for disputes particularly when large sums are involved.

Such a dispute was recently played out in the case of *Farrell v Burdon* [2019] EWHC 3671 (QB).

In this case, a mother tried to secure the return of a contribution she'd made to her son's property purchase, after he died leaving everything to his wife. The mother had loaned her son £170,000 of which £90,000 was repaid later that same year, but with no further capital sums or interest paid after that. When the son died, leaving nothing to his mother, she took action to recover the outstanding amount she said was due from his estate. The son's widow claimed that the money had been gifted to the couple. The burden of proof rested with the mother to prove that the money was loaned and not a gift as she had to rebut the presumption of advancement. In the absence of any record of the loan and the unsatisfactory state of the mother's evidence, the court concluded that the mother had not proven her case and that the payment was a gift. The mother was ordered to pay the estate's costs, reportedly around £100,000. The mother appealed the case to the High Court, but that appeal failed. Mr Justice Freedman upheld the original decision on the lack of evidence to support a finding that it was a loan, noting that there was no record of any loan which one would have expected if that were the case

Our residential property solicitor, [Peter Wright](#), commented:

"Parents naturally want to help their children get onto the property ladder, however, as Mrs Farrell found out to her cost, it can be 'cruel to be kind' if gifts or loans are not documented properly."

Not only does the lack of a written agreement create uncertainty for both parties, it can have messy consequences should the parent-child relationship sour, or the child dies or divorces.

Although it may seem like an unnecessary expense to formally document a loan or gift before any monies are advanced, it will pay for itself many times over in the event of a dispute.”

When parents contribute money to their child's purchase, it's normally intended as:

1. a gift to the child;
2. a gift to the child and that child's partner;
3. a loan (with or without interest) to the child;
4. a loan (with or without interest) to the child and the child's partner on a joint and/or several basis; or
5. a contribution in return for some form of share of ownership in the property.

Given the presumption of advancement, if the contribution is not intended as a gift it is strongly recommend that the basis of the contribution is put in writing, preferably with the benefit of legal advice. Such documentation is not just important for setting out when and how a loan is repaid; documents evidencing any gift and when it was made may be crucial when calculating inheritance tax, if it's to fall under the [rules](#) governing such gifts on the death of the giver.

Peter added:

“Parents should bear in mind that where a mortgage is involved, most major lenders will not accept anyone else except them loaning money to the buyer because of the problems that it might potentially create in an enforcement situation. Almost all lenders now insist that anyone who makes a gift to someone else as part of a property purchase must confirm to the lender in writing that the gift is not subject to any reservations or conditions and that they will not be acquiring any interest in the property as a result.”

If you are considering helping your child to buy, call residential property solicitor [Peter Wright](#) today.

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Alternatively speak to [Lalita Kauldhar](#) to discuss your inheritance tax planning.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

