

The complaint

Mr P complains that HSBC UK Bank Plc withdrew a mortgage offer a few days before his purchase was due to complete. He asks that it accepts a loan as the source of funds for the deposit and pays compensation for financial loss, anxiety, and stress.

What happened

Mr P had a mortgage with HSBC. He wanted to move home and in early 2021 he applied to port the mortgage and take out additional borrowing. Mr P told HSBC that the deposit would be funded from equity from the sale of his existing property, savings and an interest free loan of £200,000 from a family trust.

After Mr P had exchanged contracts HSBC said deposits funded by loans were not acceptable. Mr P says with only a few days before the completion date the trustees had to agree to make the funds a gift. Mr P says they did this assuming the matter would be put right after completion, when HSBC would allow the funds to be re-classed as a loan.

Mr P says having to classify the funds as a gift undermines the benefits of the trust and put him into a difficult position as he's one of the trustees. Mr P says the trust's assets are depleted and it will have to pay a charge to HMRC as a result of the gift. And his estate has increased in value meaning there will be inheritance tax payable when he dies.

HSBC accepts it should have told Mr P at the outset that a deposit funded by a loan wasn't acceptable. It offered compensation of £450.

Our investigator said this was fair. He said we can't require HSBC to change its policy regarding the source of funds for a deposit or make an exception for Mr P.

Mr P didn't agree. He said by the time HSBC said it wouldn't accept the loan he'd exchanged contracts and not going ahead would risk his deposit of £80,000. He said £450 isn't adequate. And, given the position HSBC put him in, he considers it should fairly allow the gift to be re-classed as a loan. Mr P said a letter from HSBC saying it accepts the funds as an unsecured interest free loan would suffice.

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.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

HSBC doesn't offer mortgages where a loan is the source of funds for the deposit. HSBC is entitled to make a commercial decision about its lending criteria, and ultimately it applied its criteria correctly here. The problem was that HSBC didn't tell Mr P this at the outset.

Mr P met with a mortgage adviser in January 2021 to apply to port his mortgage and take

out additional borrowing. He said he intended to fund £200,000 of the deposit for the purchase with a loan from a family trust. This was the same structure as he'd used for his existing property and mortgage with HSBC. The application proceeded and HSBC issued a mortgage offer later in January 2021.

The solicitor acting for Mr P wrote to HSBC on 19 February 2021. The letter raised three points. One was to ask HSBC to confirm it would proceed on the basis Mr P was obtaining a loan of £200,000 from a family trust which would be secured by a second charge on the property. HSBC responded to the first two points in the letter in late February 2021. It didn't respond to the question about the loan until 12 March 2021.

On 12 March 2021 HSBC responded to the solicitor by email saying the loan from the family trust wasn't acceptable and it wouldn't proceed on that basis.

Mr P had exchanged contracts on 5 March 2021. He says as his solicitor hadn't received any objection about the loan following the 19 February 2021 letter, the solicitor advised him it was prudent to proceed to exchange of contracts.

Having exchanged contracts, Mr P found himself in a difficult situation. I appreciate why he says at this point his choices were limited. He'd signed a contract to buy the property and if he didn't proceed, he'd risk losing his deposit. However, Mr P did make a choice when he decided to exchange contracts, despite not having heard back from HSBC with confirmation it would proceed on the basis £200,000 of the deposit was in the form of a loan.

HSBC had accepted this structure for Mr P's previous mortgage. And HSBC didn't tell Mr P at the outset it had changed its policy and no longer accepted this. But Mr P's solicitor had specifically asked for confirmation that HSBC would proceed on this basis and hadn't received a response. I think Mr P ought reasonably to have been aware there was a risk that the answer would be that HSBC wouldn't proceed on this basis. Mr P chose to go ahead with exchange of contracts despite this.

Mr P might have felt under pressure to exchange contracts, to avoid any risk of losing his sale or purchase. However, I haven't seen anything to suggest that HSBC was told there was a deadline for exchange. If it was important for Mr P (or the family trust that he is a trustee of) that the deposit was in the form of a loan I think it would have been reasonable to wait for HSBC's response before exchanging contracts.

The trustees of the family trust agreed that the money would be a gift so that Mr P's purchase could proceed with the mortgage from HSBC. Mr P says this was on the assumption that the matter could be sorted out after completion – by which he means that HSBC would allow the funds to be characterised as a loan. I don't know what discussions were had or assumptions made by the trustees. But I don't think any assumptions they made mean that HSBC has to allow the gift to be re-classed as a loan.

I know Mr P will be disappointed, but I don't intend to require HSBC to accept the loan.

That's not to say that HSBC didn't make any errors. Mr P told HSBC at the outset that he intended to fund part of the deposit with a loan. HSBC should have told him that it wouldn't proceed on that basis. And HSBC ought to have responded more promptly to the solicitor's question about this in their letter of 19 February 2021. HSBC didn't give Mr P and his solicitor correct information until 12 March 2021 – almost two months after he'd first spoken to it. I think it's right that HSBC pays compensation for the inconvenience and upset that resulted from this.

Mr P hasn't said what he'd have done differently if he'd been told at the outset that the loan

from the family trust wasn't acceptable. However, as I've said, I don't think it's fair to say that HSBC is responsible for Mr P's decision to exchange contracts before it confirmed whether the loan was acceptable. It follows that I don't think it's fair and reasonable to require HSBC to pay compensation for the consequences – financial or emotional – of this.

I can require HSBC to pay compensation for any losses, inconvenience and upset caused by its error – that is the delay in giving Mr P correct information.

I must be clear that the complainant here is Mr P. When I'm considering what effect HSBC's error had, I can only look into how it affected Mr P. I can't usually require compensation to be paid to third parties or for the losses or upset of third parties. So while Mr P says the assets of the trust are depleted and the other trustees were inconvenienced or upset this isn't something I can require HSBC to pay compensation for.

Mr P's purchase went ahead. He didn't lose his deposit, or the other costs and fees associated with property sales and purchases. He received a gift rather than a loan of £200,000. Mr P says the increase in his assets could mean his estate having to pay inheritance tax after he dies. Even if I thought the change in the characterisation of the funds from loan to gift was due to HSBC's error (that is the delay in giving Mr P correct information), I don't think I could fairly require HSBC to pay compensation without evidence that Mr P suffered a loss. I don't think I can fairly require HSBC to pay compensation on the basis Mr P has suffered a loss due to the possibility of his estate paying tax after his death. And I don't think I can fairly require HSBC to pay compensation to Mr P on the basis he's lost out as a beneficiary of a trust when this is due to trust assets being transferred to him.

I must be clear that I'm only considering the effect on Mr P of the delay in giving him the correct information. I'm not requiring HSBC to pay compensation for applying its lending policy, or for the consequences of Mr P's own decision to exchange contracts before HSBC responded to the question about the loan.

As I've said, I'm not persuaded that Mr P suffered a financial loss due to the delay in being given correct information. And I think a lot of the upset here is caused by Mr P's preferred structure (a loan) not being acceptable to HSBC, rather than the delay in being told this. No doubt though being told so late in the process that a loan wasn't available caused upset and inconvenience. Mr P had to discuss and agree a different structure with the other trustees – that the funds would be a gift rather than a loan – within a few days rather than over several weeks. Having considered this carefully, I think £450 is fair and reasonable compensation for the upset and inconvenience this caused.

My final decision

My decision is that HSBC Bank UK Plc should pay £450 to Mr P as it offered to do. It can deduct any amounts already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 May 2022.

Ruth Stevenson
Ombudsman