

## **The complaint**

Mrs S and Mr W complain that HSBC UK Bank Plc was unfair not to port their mortgage and refund the early repayment charge (ERC) they paid. They ask that it refunds the ERC.

## **What happened**

Mrs S and Mr W needed to move to another part of the country. Their mortgage with HSBC had a fixed interest rate product in place with an ERC payable if the mortgage was repaid during the product term. Mrs S and Mr W could avoid paying the ERC if they ported the product to a new property.

Mrs S and Mr W sold their house in September 2021. They repaid their mortgage with HSBC and paid an ERC of about £3,700. They made an offer on a property and applied to port the mortgage. In mid-November 2021 HSBC said it wouldn't port the product as Mrs S and Mr W wanted a 95% loan to value mortgage (where the amount of the loan is 95% of the value of the property). HSBC offered 95% mortgages under the Government's mortgage guarantee scheme. But it didn't allow customers to port products from previous mortgages to new mortgages under the mortgage guarantee scheme.

Mrs S says this is unfair. She says they took out the mortgage on the basis it was portable. She says they took out a new mortgage with HSBC and it should refund the ERC. Mrs S says they weren't told there were caveats to porting and continued with their application to HSBC assuming it would resolve their complaint in their favour. She says by the time they were told the ERC wouldn't be refunded it was too late to apply to another lender.

In summary, our investigator said HSBC should have told Mrs S and Mr W it couldn't port their product to a 95% mortgage in October 2021. However, by that time they'd already sold their house and so the outcome wouldn't have been different. He said HSBC's offer of £150 was fair.

Mrs S and Mr W didn't agree. Mrs S said they hadn't been treated fairly and felt they'd been swindled. I have, as Mrs S requested, listened to her call with our investigator where she explained why she didn't agree with what the investigator had said.

## **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.

Mrs S and Mr W needed to move to another part of the country. Mrs S told us why they needed to relocate and I'm very sorry for the circumstances she described. Mrs S and Mr W's needed to move during the term of their fixed interest rate mortgage product. They intended to port their product and so avoid the cost of the ERC.

Mrs S and Mr W sold their house in September 2021 and repaid their mortgage with HSBC. They made an offer on a property and in October 2021 contacted HSBC about porting their mortgage product and taking out additional borrowing.

HSBC arranged an appointment with a mortgage adviser on 16 November 2021. At this point Mrs S and Mr W were told that they couldn't port their mortgage product. This was because Mrs S and Mr W were applying for a 95% mortgage, which HSBC offered under the Government's mortgage guarantee scheme.

Mrs S and Mr W took out a new mortgage with HSBC. But as they didn't port their product, HSBC didn't refund their ERC.

*Was it fair for HSBC to apply the ERC?*

The mortgage product Mrs S and Mr W took out in late 2020 included an ERC which was payable if the mortgage was repaid before the end of 2022. The amount of the ERC and how it was calculated was set out in the mortgage rate switching offer. Mrs S and Mr W repaid the mortgage while the product was in place and HSBC applied the ERC, as it was entitled to do under the mortgage terms and conditions. I don't think it was incorrect or unfair for HSBC to apply the ERC.

*Would it be fair to require HSBC to refund all or part of the ERC?*

The mortgage rate switching offer for the product Mrs S and Mr W took out in late 2020 says the loan can be transferred to another property. It says this is subject to the new mortgage being taken out simultaneously with the repayment of the mortgage, the borrowers financial status and HSBC's normal assessment criteria.

Mrs S and Mr W checked with HSBC that they'd still be able to port if their sale and purchase were not simultaneous. They were given correct information about this (that they had six months to port). However, the new mortgage they wanted didn't meet HSBC's criteria for porting for a different reason.

Mrs S and Mr W wanted a 95% loan to value mortgage. At that time, HSBC offered 95% mortgages under the Government's mortgage guarantee scheme.

The mortgage guarantee scheme was intended to help people buy homes when they only had a 5% deposit. HSBC says where it offers a mortgage under the scheme all of the borrowing must be on the mortgage guarantee product. This meant Mrs S and Mr W couldn't port their interest rate product to a 95% mortgage. HSBC sent evidence of its internal lending criteria which supports this.

I think HSBC applied its criteria correctly when it told Mrs S and Mr W it wouldn't port their interest rate product to a 95% mortgage. The error it made was not telling Mrs S and Mr W this earlier. I don't think it's fair to say HSBC should have told Mrs S and Mr W this before October 2021. It didn't know they intended to apply for a 95% mortgage. I think HSBC should have told Mrs S she couldn't port to a 95% mortgage when she called in October and early November 2021. Mrs S told HSBC during those calls that they wanted to port and that they were looking for a 95% mortgage.

In mid-November 2021 HSBC did give Mrs S and Mr W correct information. This presented Mrs S and Mr W with a difficult choice. They could proceed with their application for a 95% mortgage and accept that they couldn't port and so the ERC wouldn't be refunded. Or they could look to apply for a mortgage with a lower loan to value so that they could port – which might have meant looking for a different property or increasing their deposit.

Mrs S and Mr W decided to proceed with their purchase. Mrs S says they expected HSBC's complaints team to resolve the complaint in their favour and refund at least some of the ERC. I think though they ought reasonably to have known this might not happen.

I've listened to Mrs S's call with our investigator and I sympathise with the position they were in. But porting applications are always subject to meeting the lenders criteria, and the mortgage rate switching offer says this. Unfortunately, the 95% mortgage Mrs S and Mr W wanted meant they didn't meet HSBC criteria to port their mortgage product.

Mrs S said by the time she was given correct information it was too late for them to act differently. I don't think that's right. Mrs S and Mr W were told they couldn't port to a 95% mortgage in mid-November 2021. They could have acted differently at this point.

Mrs S sent an email on 16 November 2021 setting out her complaint and I think she understood the problem with porting was due to the new mortgage having a 95% loan to value. This was early in the process for their purchase (which Mrs S told HSBC was due to complete in January 2022) and the six months porting window. It was Mrs S and Mr W's choice to proceed in the hope that HSBC's complaints team would agree to refund the ERC.

### **Putting things right**

HSBC did make an error in not telling Mrs S they couldn't port their product to a 95% mortgage in late October and early November 2021. This was corrected in mid-November 2021. Mrs S and Mr W hadn't taken any action between late October and mid-November 2021 that meant they were legally bound into a sale or purchase. I think £150 is fair and reasonable compensation for any upset caused by the delay in giving them this information.

HSBC's mortgage adviser told Mrs S that she'd be offered compensation. Mrs S's view is that fair compensation is for HSBC to refund at least some of the ERC. I don't think HSBC made an error when it applied the ERC or when it declined to port Mrs S and Mr W's product. I know Mrs S and Mr W will be disappointed. But I don't think it's fair and reasonable in the circumstances to require HSBC to refund all or part of the ERC.

### **My final decision**

My decision is that HSBC Bank UK Plc should pay £150 to Mrs S and Mr W, as it offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr W to accept or reject my decision before 12 May 2022.

Ruth Stevenson  
**Ombudsman**