

## The complaint

Mr and Mrs E have complained that HSBC Bank UK Plc debited £872.72 from their current account on 23 May 2022, but didn't return this until 10 June 2022.

Mr E, who has dealt with the complaint throughout, has explained that this had a devastating impact on the family, and is claiming £9,350 compensation.

## What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence, and in the investigator's letter dated 4 November 2022. All parties have a copy of that letter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs E being identified. So for these reasons, I will keep my summary of what happened quite brief.

Briefly, Mr and Mrs E have a mortgage with HSBC taken out in 2017. It was on a fixed rate product which was subject to an early repayment charge (ERC) if the mortgage was repaid before 30 November 2022.

In early May 2022, when the balance on their mortgage was about £150,000, Mr and Mrs E applied to switch their mortgage interest rate product and take out additional borrowing of £50,000. An ERC would be payable to close off their existing mortgage product, but as Mr and Mrs E were keen to secure a new five-year fixed rate, they were prepared to pay this. Mr E agreed to pay the ERC via his current account. A booking fee of £999 was paid to secure the new interest rate product.

The new mortgage completed on 20 May 2022, and on 23 May 2022 the ERC of £872.72 was taken from Mr E's current account.

Mr E complained, saying he'd not accepted the mortgage offer or authorised the bank to take the ERC from his current account. Mr E instructed HSBC to reinstate his previous mortgage and refund the ERC. Mr E said he would tell HSBC when he was ready to make the drawdown for the additional borrowing, as he didn't anticipate needing this for several months.

HSBC reversed the transaction, and reimbursed the ERC. However, it took more than two weeks for this to be credited to Mr E's account.

Mr E said that the failure to reimburse the ERC had left the family without any money. They had to borrow from family, and had to cancel plans to attend various leisure events. Mr E said that, although he and Mrs E had savings available, they'd have lost interest on these if they'd withdrawn money from their savings to cover their expenses. Mr E wanted HSBC to pay compensation of £9,350 for the losses he said the family had suffered as a result of the £872.72 not being in his current account.

HSBC didn't uphold the complaint, so it was brought to us. An investigator looked at what had happened. She thought that HSBC hadn't explained clearly enough that the new mortgage, including the additional £50,000, would be processed immediately. As a result, confusion arose because Mr and Mrs E didn't need the new borrowing immediately, and so thought that they had six months to accept the new mortgage product.

The investigator asked HSBC to pay compensation of £250. Mr E didn't agree with the investigator's findings. He's made detailed comments, the main points of which are summarised below.

Mr E said that HSBC failed to explain his "*rights*" to him, and closed down his complaint.

Mr E said that for 22 days the family was left without knowing if they were going to have money for food, which caused sleepless nights and stress which, months later, is still impacting the family.

In addition, Mr E says that missing the sporting events he'd planned to attend with his son has had a lasting impact on them both, as they cannot now go back and recreate those memories. He said that the family is unable to move on, as this has had a major impact on the mental wellbeing of the family. Mr E says that the recommendation of compensation of £250 was "*devastating*" and "*a sickening blow*".

Because the matter is unresolved, it falls to me to issue a 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.

The evidence in the case is detailed, running to several hundred pages of documents, as well as telephone call recordings. I've read everything and listened to the call recordings, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

I will also explain that the Financial Ombudsman Service isn't a court, and so we don't award punitive damages in the same way that a court would. In addition, concerns about data protection issues are best referred to the Information Commissioner's Office.

Mr E says HSBC failed to explain his "*rights*" to him and closed down his complaint. HSBC issued its final response letter on 10 June 2022 providing Mr and Mrs E with referral rights to our service. At that point, HSBC was entitled to treat the complaint as concluded. It was then up to Mr and Mrs E to decide whether or not to refer their complaint to our service. They did so on 20 June 2022. I don't find that HSBC did anything wrong in this respect.

Turning to the issues in the complaint, I accept that Mr and Mrs E, not being mortgage professionals, wouldn't have realised that the mortgage and further advance would draw down immediately. They believed they had six months within which to accept this. I'm not persuaded that Mr and Mrs E made HSBC explicitly aware of their proposed timeline, but equally the bank didn't explain that drawdown would happen so quickly. I think HSBC assumed Mr and Mrs E wanted the transaction to complete in May 2022.

Where an error has been made by a business, what we try to do is put the consumer back in the position they'd have been in if the mistake hadn't been made. In this case, HSBC reversed the transaction, and, after a delay, refunded the ERC. What I have to consider is the impact of this and what HSBC must do to put things right. I must also take into consideration whether Mr and Mrs E could have taken steps to mitigate their position.

I've taken careful note of everything Mr E has told us about the impact of the delay in receiving the refund of £872.72. Whilst I accept that the delay is likely to have caused some inconvenience, I'm not persuaded that the losses claimed by Mr E for the various events he wasn't able to attend would have been reasonably foreseeable by HSBC. In the circumstances, I'm not persuaded that the lack of access to £872.27 between 23 May 2022 and 10 June 2022 resulted in actual financial loss of £9,350.

Mr E has also told us that he and Mrs E had access to savings, albeit that withdrawing from these would have resulted in a loss of interest. Mr and Mrs E were therefore in a position to have mitigated the potential impact of not having £872.27 in their account for two weeks by transferring £872.27 of their savings into their current account. This would have enabled Mr E to attend the sporting events he'd planned, and any evidenced loss of interest on £872.72 of savings could have been claimed back from HSBC.

I can see from his submissions the intensity with which Mr E has brought this complaint. He sees error or wrongdoing in almost everything HSBC has done (or not done). That's a natural, subjective reaction, and entirely understandable when you're as close to a situation as Mr E has been here.

But I have a different remit; I have to be objective, and impartial, and look at the case based on the evidence, rather than be swayed by emotion. After carefully reviewing all the evidence, and after taking into consideration all the circumstances, I'm satisfied that the compensation of £250 recommended by the investigator for the confusion and the delay in returning the £872.27 is fair and reasonable, and is proportionate to the error made by the bank.

I appreciate this isn't the outcome Mr and Mrs E wanted. If they decide not to accept my final decision, they will be free to pursue their grievances against HSBC in court. I would suggest Mr and Mrs E take legal advice from a solicitor before embarking on any legal action.

### **Putting things right**

HSBC UK Bank Plc must pay Mr and Mrs E compensation of £250.

### **My final decision**

My final decision is that I uphold this complaint. In full and final settlement I direct HSBC UK Bank Plc to settle the complaint as set out above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 22 February 2023.

Jan O'Leary  
**Ombudsman**