DRN-4132386

The complaint

Mr T complains due to HSBC UK Bank Plc's errors he's not been able to secure an interest rate for his mortgage he wanted.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements below, and they form part of this final decision.

In October 2021 Mr T paid £999 to secure a rate for a mortgage application for six months. He was told to get back in touch six to eight weeks before the end of the six months to allow time for the application to be completed. Mr T got back in touch ten weeks before the end of the six months but found the application had already been cancelled by HSBC.

After resolving this matter, Mr T also said HSBC had undervalued his property by around £300,000. After resolving this issue as well, the application progressed but was then turned down due to affordability reasons. Mr T said he'd been making larger than usual contributions to his pension and could reduce these payments to increase his affordability, but HSBC said this wasn't acceptable. Unhappy with these issues he complained to HSBC. HSBC said their records showed a Decision in Principle (DIP) was issued 29 October 2021 and Mr T wasn't told if this was left inactive for a few months it could be cancelled. They said sorry to Mr T for the lack of communication and awarded him £100 compensation.

In a later response HSBC explained the DIP issued was for a rate of 1.04% fixed for five years (the mortgage interest rate that Mr T had wanted to secure) and it was based on a 60% loan to value (LTV) of the property. HSBC added Mr T was told it was a bank error for the rate to have been cancelled when it was, and so it was reinstated. They added a property valuation was done on 15 March 2022, which gave a LTV of 64.65% and Mr T was therefore advised to change the rate for his application. Following this, on 23 March 2022 HSBC said Mr T had an interview with a mortgage adviser, who said the application wasn't affordable. They said the mortgage adviser had offered to look at the application further if Mr T provided this year's P60, but HSBC say it wasn't received. They said any future applications would need to be completed on the rates available at the time.

HSBC also said in a call with the mortgage adviser on 23 March 2022 Mr T was asked about his existing mortgage rate expiring – and said that Mr T told HSBC he would prefer his mortgage to move to a higher rate rather than attempt to fix it due to ongoing changes in his personal circumstances. HSBC said as the application didn't progress, they arranged for the £999 booking fee to be refunded and said the £100 offer of compensation remained available to Mr T. This meant if Mr T still wanted borrowing, he'd have to apply at the rates available at the time of any future application.

Mr T didn't think this was fair. He went back to HSBC and explained he'd been told to wait six to eight weeks before the end of the six months – and HSBC hadn't commented on that. He said he started the application ten weeks before to be on the safe side and says he was told the issues would be resolved which is why he didn't try and apply for another rate – because he expected to be given the 1.04% once his complaint was upheld. This was at the *end of February / beginning of March 2022. He said when proceeding HSBC had undervalued his property by £300,000 which then required a valuation and more delays leading to interest rate movements. Mr T says he was told to complain because his mortgage adviser didn't have access to the old rates, but back-office staff could access them. Mr T understood this to mean he'd have a further six months from March 2022 in which to make a mortgage application and receive an offer – and would then be able to drawdown the funds within the relevant time limit given in the mortgage offer.*

HSBC said they were satisfied in the investigation they'd carried out following Mr T's complaint. So, he asked us to look into things, explaining that the reason for his mortgage application was to buy out his wife. He said he had a court hearing in October 2022, and if he didn't have evidence of a mortgage approved and ready by then, he'd have to sell the house which would have a significant financial and emotional impact on him and his family. One of our Investigators looked into things but didn't think HSBC had to do anything more – as he didn't think HSBC had made errors leading to Mr T not being able to get the rate he initially applied for.

Following this there has been a substantial amount of back and forth between Mr T, HSBC and our Investigator. I've summarised the relevant elements below:

- *Mr T set the amount of borrowing at 60% LTV against a valuation figure of £1.4m initially in October 2021 because he was told this could easily be adjusted without impacting on the agreed rate of 1.04%. When the property value was agreed by him, his wife and an estate agent at £1.3m, he then approached HSBC on 28 February 2022, but couldn't continue with the application because it'd been cancelled.*
- *After complaining to HSBC, they agreed to reinstate the rate on the understanding he did a new application and paid the £999 booking fee again which would be refunded once it was all locked into the system. Mr T says HSBC's system at this point valued his property at just over £1m, which caused a number of issues because it wasn't the value he, his wife and an estate agent had agreed. This led to HSBC getting a chartered surveyor to confirm the value at £1.3m as Mr T suspected – but these few weeks delays led to the 1.04% rate dropping off again. And Mr T said HSBC's mortgage adviser told him he couldn't complete the application due to limitations with their system which would not allow access to the 1.04% five year fixed rate given it was no longer accessible for new business – so he should complain to get the rate reinstated.*
- *Mr T also said his new P60 showed he could clearly afford the mortgage at the 1.04% rate, but the application previously failed because it wasn't conducted using the 1.04% rate, it was conducted using the rate at that time which was higher.*
- *A large number of phone calls have been provided – including Mr T being told if he paid another £999 then the rate would be held for a further six months.*

As I understand it, Mr T hasn't been required to sell the property as he suspected might happen in October 2022's court hearing. I understand Mr T still holds the property jointly with his wife, and the court proceedings in relation to his divorce appear to have been placed on hold while this matter with HSBC is considered by this service. So, I'm satisfied the court isn't involved in the considerations of this mortgage application and it is something I can look at. If anything changes though, that may affect my ability to consider this complaint, and Mr T should let our service know as soon as possible.

What I've provisionally 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.

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr T's complaint in considerably less detail than he has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

Mr T's more recent focus has been on proving he was told he'd have another six months in which to have made the application – and says he's confident he'd have been successful given his history with HSBC.

Although I understand Mr T's point, actually I think the 'second' six-month time period isn't quite as important as what happened in the first six-month time period.

Before explaining my thoughts on that, I do need to explain where information is incomplete, contradictory or just unknown, as some of it is in this case, then I need to decide what I think is more likely than not to have happened based on the information I do have.

The first six-month time period

On 29 October 2021 Mr T got a DIP at a rate of 1.04% on a fixed rate for five years – and he paid a fee of £999 to book this rate.

A DIP is a basic check by a lender to see if they might potentially lend funds to a customer. It doesn't guarantee that the lending will be granted, as further checks need to be carried out on the property such as valuations, making sure the customer can afford the repayments on the mortgage, and checking their credit file, which, amongst other things, all form part of an assessment for a full application.

So, at this point, Mr T had simply booked a mortgage interest rate, on the understanding that a number of additional steps are needed before he could potentially be granted the lending by HSBC.

Mr T was told the DIP lasts six months, with the rate locked in for the duration. So, if he completed his mortgage application by the six-month deadline of 27 April 2022, then he would secure his mortgage interest rate of 1.04%.

Mr T explained to HSBC the money is for divorce proceedings, so he wanted to know how long he could leave it before applying for and drawing down the money. Mr T says HSBC told him he should come back to them 6-8 weeks before the end of the six-month period as *that should give plenty of time for the full mortgage application process to be completed – and then he'd have further time to draw down the funds once the mortgage offer was approved.*

But this information was incorrect. What HSBC should have told Mr T is that if there is no further activity three months after a DIP has been issued, then the DIP is cancelled, and the interest rate booked is lost. Any future application would therefore be subject to the interest rates at the time of the new application.

In Mr T's case, this means he needed to have progressed his mortgage application by the end of January 2022 – but it's not until 28 February 2022 I can see he looked to proceed with his application and found out his DIP had been cancelled.

HSBC have accepted they gave Mr T the incorrect information – which is why they awarded him £100 compensation.

Mr T wants HSBC to be required to offer him a mortgage at 1.04% on the same terms he originally applied for – but not until the second six-month time period.

Our service won't generally tell a financial business to lend. That's because it's ultimately that business's commercial judgement on whether they wish to do so or not. And my role is to put matters right where they've gone wrong.

Here, it's clear HSBC made an error – but I have to consider the impact of that error and what more likely than not would have happened in the circumstances. I can see Mr T's view is the impact is HSBC haven't lent to him at a rate of 1.04% and they should. But I've explained above we wouldn't usually tell a lender they have to lend – and actually Mr T hadn't got too far in the mortgage application process. So, I can't say with any confidence HSBC would have lent to him even if the issue with the delay hadn't happened.

Another option is I could ask HSBC to assess the application based on the October 2021 DIP criteria. But I'd need to be satisfied it was more likely than not the application would have got through all of the stages, and that Mr T would have then drawn down the funds. For reasons I'll go on to explain, I'm not satisfied either of those are more likely than not to have happened.

The reality is at this stage I can't know if Mr T's mortgage application would have been successful. I can see he was very confident it would have been but there were a number of complications which I think calls that into question.

The first of those is affordability. I'm aware Mr T earns a significantly higher than average salary, but he did fail affordability when discussing this with a mortgage adviser due to his pension contributions reducing the amount of his available income. He'd have had to prove he could meet HSBC's requirements before the end of this six-month time period. To do so, he'd have had to stop his pension contributions, and that then be something HSBC were satisfied with from an affordability perspective.

Mr T has told us he did stop his pension contributions and has provided some evidence of this which is appreciated. So, it's possible he may have been able to meet HSBC's affordability requirements. But HSBC's mortgage underwriters would have needed to reassess his affordability – and I can't rule out they'd have had more questions about his circumstances. HSBC have made it clear they're not used to dealing with someone with Mr T's employment status and that in itself seemed to be a complication for HSBC when discussing whether he could afford the mortgage or not.

I also need to factor in the court proceedings. Initially, it's clear Mr T wants to lock in the rate as soon as possible in order to borrow the amount he thinks is necessary to buy out his wife from the property.

Unfortunately, the divorce proceedings have continued, and Mr T has told us his wife has changed her position regarding the house – meaning it might have to be sold. It seems to me this was likely always a possibility. Initially Mr T applied online by himself – so this would have been a non-advised sale. But, later on, HSBC offered Mr T the option of using one of their mortgage adviser's which he agreed to. The mortgage adviser may well have said to Mr T that locking in a rate for five years, and borrowing such a large amount of money, wouldn't be a good idea because of the early repayment charge that he could end up being forced to pay. And the mortgage underwriters may well have decided they weren't prepared to lend in all of these circumstances – and especially if their mortgage adviser was also saying this wasn't a good idea. Objectively, it wouldn't seem like a good idea – as Mr T didn't have any control over whether the property would need to be sold – and given the amount he was borrowing it would then have been a very high early repayment charge.

In addition, even if HSBC had given Mr T the correct information, and he'd applied a month earlier, I can't be fully satisfied he'd have been able to complete all of these steps in time. There were a large number of complications which would have taken some time to resolve meaning he could easily have missed the six-month DIP time period. In which case then, he'd have had to reapply for lending at the rates then offered by HSBC – which were higher than 1.04%.

I also need to consider Mr T's position – would he have still wanted to borrow the funds? This is a question because in several phone calls in March 2022 Mr T makes it clear it's now better for him to draw the funds down later.

When Mr T first applied for the DIP in October 2021, I think he thought the divorce proceedings would all be resolved within the timeframe for him applying and drawing down the funds of that mortgage. I say that because his express purpose of applying for this mortgage was to buy his wife out of the property.

But, as we know, unfortunately things didn't end up going as I think Mr T thought they would. And by the deadline for this DIP to be completed – 27 April 2022 – I don't think Mr T necessarily wanted to have had the mortgage application completed because of the delays with finalising his divorce. And as things stand now, the divorce matters still haven't been resolved, so Mr T could still be forced to sell the property and has referenced this in his last email to our service. So by not completing the application process and drawing down additional funds, Mr T is potentially better off for not having the additional financial commitment. I think, if obtaining the funds was the most important thing for Mr T, it's reasonable to question why he didn't and hasn't taken steps to secure the funds in any event in order to take full ownership of the property.

As I mentioned above, an option open to me was to consider whether HSBC should assess Mr T's application in line with the October 2021 criteria. But for all of the reasons I've mentioned above I simply can't be sure any application would have been successful and – even if it was, Mr T himself has said that didn't work for him anymore.

In the circumstances then, I don't think this is an appropriate remedy. I'll consider what is at the end.

One other point to address though is the valuation as I know Mr T was concerned by this. Following on from his contact on 28 February 2022 where he found out his DIP had been *cancelled, HSBC progressed the application – a desktop valuation seems to have been entered on HSBC's system on 1 March 2022.*

The valuation figure this returned was lower than Mr T was expecting and what was needed to keep the mortgage interest rate he wanted. I do need to make it clear I don't think HSBC did anything wrong in carrying out a desktop valuation initially as this is not an unusual practice. And that following the discrepancy between the expected valuation figure and what was returned, they then did the right thing by sending someone out to carry out a more detailed valuation. This came back on 15 March 2022 with the amount Mr T expected. Because I don't think HSBC have done anything wrong, I don't agree with Mr T HSBC have unreasonably delayed things on this point which is why I've not factored it in to my considerations above.

The 'second' six-month time period

Following Mr T's contact on 28 February 2022 he spoke to someone who told him the rate could be re-locked in for another six months if he paid the application fee again.

Despite asking HSBC for all calls Mr T made, this wasn't provided. HSBC told us they'd provided all the calls they had. When we relayed this to Mr T, he didn't believe it, so HSBC suggested Mr T do a subject access request (SAR) to ask for all calls – which he did – and this call was provided.

This was also on the back of other calls which were referred to in calls provided by HSBC, that weren't provided to our service when asked. I find this extremely disappointing. I don't think HSBC were trying to hide anything, but it shouldn't be necessary for our service to make repeated requests for calls, or for one of their customers to be put to the inconvenience of doing a SAR, when they should be giving us the relevant information when asked.

I've now listened to the call and Mr T was told if he paid the £999 booking fee again, then the rate of 1.04% would be locked in for another six months. My understanding is Mr T wasn't able to pay the second £999 booking fee due to system issues.

This was incorrect information. The rate is only booked for six months, so if Mr T had paid another booking fee, then that would have been on the rate available at the time – which was higher than the 1.04%. Our service doesn't look to make incorrect information true, instead we look at the impact of the incorrect information on a consumer.

I understand Mr T would have been happy to lock in the rate of 1.04% for another six months, but I'm required to put matters right where a mistake has been made. The first mistake, and the first time where it would have been appropriate to ask HSBC to assess his application again, would be during the first six-month DIP time period. But I've explained why I don't think that's the right thing to do in this case. So, again, I'll consider the way to put right this error – telling Mr T the rate could be locked in again for six months in error – in the next section.

Putting things right

Overall then, I've found HSBC have made two errors. They should have told Mr T he needed to follow up his DIP from October 2021 within three months – and they told him he could lock in the 1.04% rate for another six months when this wasn't correct.

Thinking about the first error, in my view this has prevented Mr T from being able to apply for the mortgage on the 1.04% rate. But I also think there are too many variables for me to reasonably say they should assess his mortgage application based on backdated criteria.

So, I require HSBC to pay Mr T compensation for the errors they've made in handling matters for him. The initial incorrect information has led to problems with Mr T applying for a mortgage at a rate he wanted – and has left him feeling like HSBC would put that right when actually they weren't going to be able to. This has been compounded when, for example, Mr T has had to carry out a SAR to provide phone calls to us when HSBC should be able to provide them without putting their customer to further inconvenience.

Mr T has made it clear HSBC not being required to offer the 1.04% rate will have a significant impact on his family. I am genuinely sorry to hear that as it sounds like he and his family have already had an exceptionally difficult time. But overall I think a total of £500 compensation is fair. I'm aware HSBC have already awarded £100 – it's unclear though if this has been paid. So, if it has been then HSBC only need to pay a further £400 – if it hasn't, then HSBC need to pay £500.

Responses to my provisional decision

HSBC replied and said they agreed to my recommendation of £500. They said if Mr T accepted this outcome, it'd be helpful if he provided the account details of where he'd like the money paid to.

Mr T provided a number of further responses to my provisional decision. I've taken into account those comments in this 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.

Process of applying

Mr T has made the following comments I'd categorise as being relevant to the process of applying for the mortgage:

- He's been a customer of HSBC for around nine years but has been carrying out the same work for longer than that – so my comment about his employment status being an issue for HSBC can't really be true.
- For the house valuation, Mr T said this was a bug in HSBC's systems which meant they didn't value the property correctly.
- He said he didn't fail affordability, the only checks he failed was due to a false statement from a mortgage adviser about the pension contributions.

In respect of Mr T's comment about his employment status I do understand what he's saying. But, I was simply reflecting what HSBC had said in their contact with him. And although I understand he's been with them for a long time, that doesn't mean their criteria couldn't have changed from when they lent to him before – making his employment status more of an issue than it may have previously been.

As for the house valuation, I can see Mr T has drawn on his professional experience to make this comment. But I think there is a reality which is house prices fluctuate quite frequently – and even if, hypothetically, the valuation had been returned as the amount Mr T says was correct, HSBC could have still said they wanted a surveyor to go out and visit the property. So, realistically, I can't legitimately say there were any delays caused here.

Regarding affordability I disagree with Mr T and his comments that the mortgage adviser made an incorrect statement. From the information I have it's HSBC's process to discount pension contributions – even voluntary ones – from the calculations on whether someone can afford the mortgage or not. When HSBC did this initial calculation they said Mr T couldn't afford the mortgage due to his voluntary pension contributions. I do accept Mr T potentially could have met these requirements, but at the time of the conversation regarding this he simply didn't.

Contact from HSBC

Mr T received contact from HSBC saying he's on their SVR, and as he's already an HSBC customer there's no application, eligibility or credit checks, and they don't need any documents from him. He said this contact blows a hole in their whole premise.

The contact Mr T has received appears to be a generic email from HSBC to all their customers on the SVR – and I think it's simply asking if people want to switch to a fixed rate mortgage. So, I don't think this was specifically aimed at him, and if someone is borrowing more money, as Mr T was planning to, then I would always expect more checks to be done.

Overall outcome I've reached

Mr T provided a large number of comments, which I've summarised in my own words as:

- It's not fair to discuss the idea of HSBC not honouring their original rate when he's proven they were wrong about various things – such as his employment status and providing phone calls.
- There is no evidence the mortgage application would have been delayed at his end – the only delays were due to HSBC.
- Any outcome that attempts to predict the future success of a mortgage application isn't right or fair, particularly when he paid his £999 as part of the contract.
- HSBC previously reapplied the original rate proving it's a good way to resolve things so should do it again – and he can't see the harm in HSBC being asked to do so.
- The £500 compensation I've awarded doesn't compensation him for the extra costs on not getting a mortgage elsewhere, when he thought this complaint would sort things out.

I've considered everything Mr T has said carefully, but I do remain of the opinion £500 is still overall a fair outcome for this complaint.

As I acknowledged in my provisional decision I can't know if Mr T's application would or wouldn't have been successful. So, all I can do is look at all of the information provided to me, to reach a fair and reasonable outcome.

Here, Mr T applied for a rate and whether he agrees with the reasons given or not, HSBC did have some concerns – these being his employment, the valuation of the property, and whether he could afford it. Although HSBC had already lent on the property, this doesn't mean by default he can get additional lending without checks. As I've explained, for further lending I'd virtually always expect checks to take place.

The checks that did take place threw up some issues which weren't resolved. I can't rule out the possibility they all could have been resolved by 27 April 2022 – but these points weren't the only things I was considering.

I was also considering whether Mr T would have wanted to proceed with the mortgage or not. Him saying it's better for him to delay the mortgage in March 2022, presumably due to the divorce proceedings, does make it difficult for me to fairly say he should be allowed to go through the process with HSBC.

I also can't ignore that Mr T didn't go and seek alternative lending after HSBC turned down his complaint – and then after our service agreed HSBC didn't need to offer him the 1.04% rate. I know Mr T will say that's because he was told the complaint would sort things out, but I don't think it's unreasonable of me to think after he'd been told twice that wasn't going to happen, he take alternative steps to secure the borrowing he needed.

All of this is also against the backdrop of his divorce. When previously asked Mr T said he wasn't able to share confidential information about his divorce. I wouldn't ask nor expect him to do so. But, that does mean the concerns I have about the Judge potentially ordering him to sell the house remain valid. If the Judge did this, Mr T would be subject to a quite significant ERC.

Overall I'm still not satisfied it's reasonable to require HSBC to complete the application process and potentially offer mortgage terms on a rate of 1.04% when I can't say that the application may have reached its conclusion – or that Mr T would ultimately have accepted / could have accepted this rate.

As for the £999 HSBC have said this was refunded to Mr T and I've seen the relevant evidence of that. I need to make it clear I can't decide if HSBC have broken the law – Mr T has referred to not wanting to break his contract with them – but I can decide if they've acted fairly and reasonably.

I think by refunding the £999 that's fair and reasonable – and due to the errors they've made I remain of the opinion £500 (taking into account the £100 already offered) is a fair way of resolving matters.

My final decision

I require HSBC UK Bank Plc to:

- Pay Mr T a total of £500 compensation – HSBC can remove any compensation already paid for this complaint from this figure.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 June 2023.

Jon Pearce
Ombudsman