

The complaint

Mr P complains that, having told HSBC UK Bank Plc the length of term of the lease on his buy to let property and had the mortgage application accepted, the bank then withdrew the mortgage offer because it was unhappy with the effect of the short term of the lease on the saleability of the property.

What happened

Mr P applied for a remortgage with HSBC through a broker with the intention to complete in early March 2023. The amount of the loan was £107,500 for a 20-year term and a fixed interest rate for five years of 3.83%. Mr P's property had a remaining term of 68 years on the lease. Mr P was asked about the remaining term on the application and told HSBC that it was 67 years. Mr P realised that there might be an issue with the lease term but says that HSBC told his broker that the lease would be ok if the valuer didn't have an issue with it as the main criteria is there to be not less than 30 years left at completion. A valuation took place and the offer produced. The lease term was queried by the solicitor and referred to the valuer who then decided that the lease term would have a detrimental effect on future saleability and recommended a lease extension which Mr P says at the time he couldn't afford. Mr P expected the remaining term of lease issue to be picked up by the valuer early in the application process. Mr P was unable to complete on the re-mortgage and had to complete a rate switch with his current lender. Mr P chose a fixed rate deal of 5.64% fixed for two years.

HSBC in its final response letter says that it requires there to be no less than 35 years remaining on the lease at the end of the mortgage term (I note its instructions to brokers says 30 years) and that the application met this criteria. But it says that this is a minimum and doesn't guarantee that the application will be accepted. Although Mr P put the remaining term of the lease on the application, HSBC says that the standard valuation doesn't include a lease check even though the valuer is looking at the marketability of the property. It says that the lease checks are conducted by a solicitor during the conveyancing stage and then the valuer was asked to reconsider the marketability of the lease with the lease details available from the solicitor. At that stage it says that a risk-based decision was made to require a lease extension as a condition to lending.

Our investigator, whilst not disagreeing with HSBC's decision on the application felt that it should have reached its decision earlier given that Mr P had said in the application process that the remaining term was 68 years. She recommended compensation of £250 for Mr P's inconvenience but didn't consider that this caused him a financial loss as he secured a mortgage at a lower rate than if he had looked for an alternative mortgage earlier. HSBC raised some issues with our investigator but, whilst disappointed, accepted her view. Mr P disagreed setting out his grounds for doing so in an email of 25 July 2023 which I've considered along with his earlier submissions.

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 length of term of a lease may have an effect on the saleability of a property and the valuer here considered that it would have a detrimental effect and required a lease extension to allow HSBC to lend on the property. The issue here is when HSBC should have known this and told Mr P. As I understand it, HSBC has a process whereby, as a preliminary issue it eliminates those properties whose lease has 30 years or less remaining at completion. That it seems is why it asks applicants for the length of term of their lease initially as a filtering exercise.

But at the stage where it instructs a valuer, it assumes, despite what the applicant may have written on the application form, that the remaining term is 85 years or more. At that stage, the valuer does not factor in the effect of the lease term on valuation. That is left to a later stage, after the mortgage offer issues. When the solicitor reports on the title to the property on the length of term of the lease and the exact term is ascertained by the solicitor. At that stage, when the length of the term is confirmed by the solicitor the valuer may be asked to comment on how it affects saleability of the property. That appears to be HSBC's process.

But from Mr P's point of view, he knew within a year what the term of the lease is, informs via his broker HSBC from the start what it is and assumes reasonably that the valuer has been told. So, when the valuer approves the mortgage initially, Mr P has good reason to believe that the lease term isn't an issue.

On the one hand I accept that HSBC has gone through its process, and I can understand the logic of it to protect itself from lending on a lease that would cause it problems with its security. It may be, and I expect it isn't uncommon, that a customer wouldn't know the exact length of the lease. So, leaving that issue to the solicitor seems fair and reasonable and it's the solicitor's role to advise on title which would include the lease and its term. But I also understand that there was a failure of communication with Mr P to advise him that the valuer had not yet considered the term of the lease in its valuation and that he had not yet passed that hurdle. The one clue is on the valuation report which refers at paragraph 7 as the remaining term being 85 years when it wasn't.

I note that in its instruction to brokers HSBC says that if the unexpired term at the outset had less than 85 years remaining, the marketability of the property would be subject to the valuer's opinion. The question is when one can expect to get that opinion? Mr P would have expected it with the valuer's initial report. HSBC says that the valuer won't comment on it until after the conveyancer inspects the title. Again, I can see the logic of that, but I can also see Mr P's point that he cannot know that the valuer hasn't considered the lease term if he's already supplied the term of the lease before the valuer does his report.

I accept that HSBC can withdraw or amend its offer if matters come to its attention after the mortgage offer issues that affect the saleability of its property and, so, the value of its security. Under HSBC's processes this information from the valuer, after the solicitor reviewed the lease, came subsequent to the mortgage offer issuing. But there is clearly a failure of communication here with Mr P assuming, reasonably that the valuer would use the information he supplied about the lease term in the initial valuation and HSBC using it as a screening tool and not communicating it to the valuer.

This failure of communication leads me to uphold this complaint. I've come to a conclusion the same as our investigator but on different grounds. Our investigator's view was that HSBC should have used the information provided by Mr P in the initial valuation and so told Mr P earlier that he would need a lease extension. After reviewing HSBC's processes, I don't consider they did anything wrong except not tell Mr P or his broker what they were doing and

that the valuer was not considering the length of the lease term in the initial valuation. In any case we both agreed that the complaint should be upheld.

In my view, it would have been disappointing for Mr P and would have distressed him when he realised that he had not yet passed the test of the length of the lease. For that I believe that compensation is due and that the £250 suggested by our investigator is appropriate. But I don't consider that financial compensation is due. I note that our investigator didn't believe either that financial compensation was due. She said that at the time when Mr P applied to HSBC it wasn't clear that he would be able to borrow money from other lenders as on any new application as those lenders might require him to extend the lease term as HSBC did which he was then unable to do and that the rates available to him in November 2022 from his existing lender for a switch were all above the 5.64% which he is now on. Mr P says that he could have got a better deal in October 2022 when the valuation report was issued and that valuation report in his view should have dealt with the lease term issue. But, as I say above, I can't fairly say that it that it should have done so.

HSBC followed its process and I've accepted that it's a fair and reasonable process. So, although my view is that there was a communication failure I'm not of the view that HSBC's process of revisiting the valuation after the solicitor comments on the lease term was unfair or unreasonable. I know that Mr P believes he was disadvantaged by the wait for a decision, but I don't consider that there was delay in reaching its decision although it could have managed its communication with Mr P better. So, I uphold this complaint and require HSBC to pay Mr P £250.

Putting things right

HSBC UK Bank PLC to pay Mr P £250.

My final decision

I uphold this complaint and require HSBC UK Bank PLC to pay the above compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 November 2023.

Gerard McManus
Ombudsman