

The complaint

This complaint is about a mortgage that Mr S took out with HSBC UK Bank Plc. He's unhappy that delays, error and omissions on HSBC's part resulted in him paying more for the property than originally agreed, and caused him a high degree of stress and worry.

What happened

The broad circumstances of this complaint are known to Mr S and HSBC; they've been set out in correspondence between both parties. I'm also aware that the investigator issued several detailed responses to the complaint all of which have been shared with all parties, and so I don't need to repeat the details here. Instead, I'll focus on the reasons for my decision. 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.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This isn't a decision where I have to decide fault; HSBC had admitted mistakes and has offered significant compensation. What I do have to decide is whether HSBC's offer is sufficient, or should be increased.

There are two broad strands to the redress in Mr S' case:

- the financial loss, which is self-explanatory, and
- the non-financial loss, which typically covers the distress element; i.e. time, trouble and upset.

I'll deal with the latter first. Even in the best-ordered situation, some things can or will go wrong in such a complex transaction as a house purchase, and some degree of stress and inconvenience is to be expected. But the problems with this case, and the levels of stress they generated, were greater what might be regarded as normal for or expected for such a transaction.

The sum HSBC has offered Mr S, indeed has paid him already, is £3,600. Looked at in isolation, that's a substantial sum; it certainly falls into the higher than average range of awards we typically make. But here, in the specific circumstances that apply here, I think it's

justified. Mr S has talked with commendable frankness about how his personal situation has been affected.

I don't reveal the details here, out of respect for his privacy; Mr S also makes the point that the stress he's experienced is ongoing, and I respect that. But even factoring that in, I'm persuaded that £3,600 is justified, and am glad HSBC made a realistic offer of compensation in its response to the complaint. That doesn't always happen.

Deciding on fair redress for the financial loss element is a bit more involved. When assessing the impact of the delay, I have to consider not just the duration of it, but also how much of it is attributable to things that HSBC did, or didn't do.

Mr S has taken particular exception to HSBC's decision to insist on a UK Disclosure of Incentives Form (DIF) being provided by the seller of the property Mr S was buying. He thinks it was unnecessary, and of course, he's perfectly entitled to that view. Ultimately though, this was an underwriting decision, a matter of commercial judgement, that was HSBC's to make.

Every lender's appetite for risk is different, and if HSBC judged that a DIF was necessary, I don't think there are grounds for me to second guess that judgement or deem it unfair. In reaching it, HSBC relied on the expert opinion of the surveyor who valued the property, and I have no remit to consider whether the surveyor's opinion was incorrectly drawn. All I can conclude is that HSBC could reasonably rely on it. This process alone added around two months to the transaction, but as I don't think HSBC was wrong to invoke it, I can't hold HSBC liable for this element of the delay.

The mortgage offer HSBC issued in March 2022 was ambiguous about its expiry date. However, the bank remedied that by issuing a new offer on the same terms, which is what I'd expect it to do in such circumstances.

A more difficult error to remedy was HSBC's mis-communication over the gift Mr S was receiving towards the purchase. Firstly, HSBC said the gift was unacceptable when in reality it was acceptable. HSBC then compounded the problem by emailing both the incorrect and the amended responses to the wrong email address.

The upshot of all this was that Mr S's seller increased the purchase price by £59,000, and Mr S agreed to pay it. HSBC has accepted it was responsible for delays that led to the increase, and has offered redress for that. It didn't agree to pay the extra £59,000 Mr S paid, on the premise that he could have negotiated with the seller. Instead, HSBC calculated a sum by reference to the UK House Price Index. Based on what it had identified as 55 days' delay on its part (something Mr S also disputes – he thinks the delay was longer) HSBC paid Mr S £15,015.

Our investigator thought it more appropriate to take the price increase as a starting point, but to hold HSBC liable for half of that – i.e. £29,500 – on the grounds that there were other contributory delays outside its control. Mr S sees that as arbitrary, but I view more in terms of judging what is fair across the piece.

It wouldn't be fair, in my view, to base redress on the basis that Mr S should have negotiated terms with his seller by reference to house price indices; that would be to assume he had equal bargaining power and perfect knowledge of the market. Certainly, the index information HSBC used would not have been available to Mr S at that point, as these mechanisms are not updated "in the moment".

Not every complaint has a perfect solution, and here overall I think the investigator's approach of using the actual increase as the starting point and then apportioning, is the best one for the circumstances.

Having considered everything that both parties have said and provided, I've concluded that £29,500, less the £15,015 already paid, is fair and reasonable in all the circumstances. This approach, which HSBC has agreed to abide by, has the additional virtue of taking the precise number of days by which specific errors or omissions by HSBC should be deemed to have delayed the completion out of the equation. I say that because some of the additional time Mr S has cited as being attributable to HSBC was concurrent with the issue over the DIF so it wouldn't have been material in any event.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from their submissions how important this is to Mr S. That's a natural reaction, and entirely understandable when you're as close to a situation as he has been here.

But I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

Mr S doesn't have to accept my final decision, and if he doesn't neither he nor HSBC will be bound by it. Subject to any time limits or other restrictions a court might impose, Mr S' right to take legal action against HSBC over the subject matter of this complaint won't have been prejudiced by our consideration of this complaint. Given the sums involved, if he's contemplating taking this route, Mr S might wish to consider seeking legal advice first.

My final decision

My final decision is that HSBC UK Plc should settle this complaint fully and finally by paying Mr S £29,500, less £15,015 already paid, making £14,485 in all. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 September 2023.

Jeff Parrington
Ombudsman