

The complaint

Mr and Mrs B's complaint about HSBC UK Bank Plc (HSBC) relates to their application to port their existing mortgage to a new property they were looking to buy and HSBC's decision to decline it.

What happened

Mr and Mrs B had a five-year fixed rate mortgage which expired on 31 March 2028. They understood that if they redeemed the mortgage early there would be an Early Repayment Charge (ERC). They also understood that they could port the mortgage to another property although that was subject to HSBC's agreement. They also accept they knew there wasn't any guarantee that HSBC would agree.

In 2022, Mr and Mrs B found a new property they wished to buy and applied to HSBC to port their mortgage. They obtained a mortgage offer from HSBC for the new property in February 2023.

After receiving information from Mr and Mrs B's solicitors, HSBC rescinded the mortgage offer explaining that the property didn't meet its security conditions. The issue which had arisen was that an access road had not been adopted by the local authority which HSBC said would adversely affect the future resale of the property. They said lending against this particular property went against their lending policy relating to unadopted roads.

HSBC referred Mr and Mrs B to the terms of the mortgage offer, in particular that the offer had been made *'on the assumption that title to the property, over which we'll require a first legal charge is good and marketable and free from any matters which might adversely affect our security'*.

As a result, Mr and Mrs B had to take a mortgage elsewhere and in so doing triggered the ERC which they feel is unfair because HSBC had previously lent on a different property, on the same road as the property they were wishing to buy, albeit to someone else.

Mr and Mrs B were unhappy with HSBC's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that HSBC hadn't done anything wrong and had dealt with the complaint fairly. Mr and Mrs B didn't agree and asked for the complaint to be passed to an Ombudsman for a 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.

I know the parties provided a lot more detail than my summary, but I shall focus on what I see as the key issues. Our rules allow me to do this, and it reflects the informal nature of our service as an alternative to that of taking action through the Court. If I've not mentioned

something then this isn't because I've ignored it, rather it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

The accepted facts are that Mr and Mrs B had a mortgage that was subject to an ERC, which they understood and accept. HSBC issued a mortgage application which they later rescinded. Further, in March 2023, Mr and Mrs B's solicitors notified HSBC that the access road to the property had not been adopted nor was it maintained by the local authority or any other party. HSBC accept that they introduced a new policy relating to unadopted roads in March 2023 as a result of receiving the information from Mr and Mrs B's solicitors, which was after Mr and Mrs B had made their application.

Whilst HSBC have not commented on the specific facts of any other property or loan on this particular road they have confirmed that the mortgages they have provided, all took place prior to the implementation of their current policy.

Mr and Mrs B have argued that their application should have been assessed against the policy which existed at the time they made their application. In other words, as HSBC's new policy came into effect after their application had been made they shouldn't be subject to it. Mr and Mrs B have accepted that HSBC are entitled to make their own policies and have the right not to lend in certain circumstances, so the issue becomes, as Mr B has said, one of timing.

For the avoidance of doubt, it's not the role of this service to recommend how financial businesses should conduct or arrange their commercial operations and processes – that's for them to determine. We don't have the power to make rules for financial businesses, assess or direct that they change their policy or procedures. We only look at what happened in the circumstances of the individual complaint and check they followed their rules and procedures and have applied them fairly.

I start from the position that HSBC are entitled to change or introduce policies as they see fit. I do understand that Mr and Mrs B feel as though they have been treated differently to those who secured a mortgage from HSBC prior to their application, but that is because those other applications were subject to a different policy.

At the time HSBC introduced their new policy Mr and Mrs B had not completed on the mortgage and so I think HSBC are entitled to consider the newly introduced policy, since it quite obviously affected the decision on lending. HSBC reached their conclusion that lending to a property with problems surrounding the unadopted road was something which might adversely affect their security, and that is a reasonable position to take. The policy is being applied to all of HSBC's customers, and so it cannot be said that Mr and Mrs B are being treated any differently to any other customer whose mortgage had not completed.

I acknowledge that Mr and Mrs B have argued that other lenders have not thought the issue of this unadopted road to be a problem, but each lender has their own different lending criteria. The fact that one lender might take a different view to lending against a particular property does not mean that HSBC's decision becomes unfair.

Having found that HSBC haven't acted unfairly in relation to this particular point I now turn to the issue of the ERC. This was a charge which Mr and Mrs B knew would be raised if they went ahead and redeemed their mortgage when they did. I can't say HSBC are therefore acting unfairly in charging the ERC because it was something Mr and Mrs B agreed to pay when they took the mortgage out.

So, although Mr and Mrs B will probably be disappointed with my decision, I can't say HSBC has acted unfairly or unreasonably here and I'm not upholding this complaint.

My final decision

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 29 March 2024.

Jonathan Willis
Ombudsman