

## The complaint

Mr B and Mr W complain that they were given incorrect information by HSBC UK Bank Plc when they tried to apply for a new fixed rate on their mortgage. They believe they've paid more interest as a result. They want HSBC to repay this additional interest directly to them.

## What happened

Mr B and Mr W have a mortgage with HSBC. The fixed rate on this mortgage was coming to an end in September 2022. They spoke with an HSBC mortgage advisor in July 2022 and explained they wished to make an overpayment of £25,000 before the mortgage went on to any new fixed rate they may apply for. The mortgage advisor explained that they were unable to select a new interest rate until the expiry of their existing fixed rate if they wished to make an overpayment at the end of the current fixed rate. This information was incorrect.

When Mr B and Mr W applied for a new mortgage rate in October 2022, they became aware the information they'd been given was incorrect and mortgage interest rates had since risen. Mr B and Mr W moved to HSBC's standard variable rate (SVR) for a few weeks. Mr B and Mr W complained to HSBC about this.

HSBC upheld the complaint and agreed that Mr B and Mr W were given incorrect information in July 2022. It agreed that this had meant that Mr B and Mr W had moved to its SVR unnecessarily. HSBC allowed them to select a rate that would've been available to them in July 2022 and agreed to backdate this to 1 October 2022 when their previous fixed rate ended. HSBC refunded what it said was the over charged interest to the mortgage account. HSBC offered, in total, £375 compensation for the distress and inconvenience this matter had caused. However, Mr B and Mr W thought that the additional interest they'd paid as a result of being on the SVR should be refunded directly to them.

HSBC says that interest cannot be refunded to a borrower as it is the loan that is affected by the delay in applying the interest and any refund to the customer would increase the mortgage debt.

One of our Investigators looked into this complaint. She thought it should be upheld and the overpaid interest amount should be paid directly to Mr B and Mr W. Mr B and Mr W accepted this, but HSBC didn't. It maintained that its approach of repaying the interest to the mortgage account was correct. So, the complaint was passed to me to make a decision.

I issued a provisional decision on 22 January 2024. In this, I said:

*HSBC has agreed that incorrect information was provided to Mr B and Mr W. And it's offered them the mortgage rate that was available when they were given incorrect information in July 2022. And it's backdated this to 1 October 2022. I think this puts their mortgage rate back in the position it should've been had they not been given incorrect information. And I understand that Mr B and Mr W agree with this as well.*

*What is in dispute is what should be done with the additional amount of interest payments Mr B and Mr W made whilst their mortgage was on the SVR.*

*Like our Investigator, I currently fail to see why HSBC doesn't agree that Mr B and Mr W have paid monthly payments of more than they should have. HSBC has tried to explain this in detail. But currently, I can't agree with its explanations or follow its logic. I'll explain why.*

*Mr B and Mr W's mortgage should, had it not been for the incorrect information, gone to the new fixed rate on 1 October 2022. Instead, their mortgage interest rate reverted to the SVR on 1 October 2022. This meant that the monthly payment for October 2022 was based on a higher interest rate than it should've been – the SVR rather than the new fixed rate. Mr B and Mr W paid this monthly payment. And this is money that Mr B and Mr W have paid from their own pocket – not money that has been added to the mortgage balance.*

*It appears that the correct interest rate was applied from 8 November 2022. I understand that HSBC would have to amend the future mortgage payments – so this may account for any overcharged interest in November 2022. But this doesn't change the fact that Mr B and Mr W paid more than they needed to in at least October 2022. And I fail to see why this amount should be refunded to the mortgage account.*

*So, based on what I've currently seen, Mr B and Mr W paid more than they needed to as a monthly payment in at least October 2022. It's unclear if this was the case in November 2022 so HSBC should confirm this in its submissions to us.*

*Based on this, I'm currently minded to tell HSBC to work out what the October monthly payment would've been had the mortgage been on the correct interest rate against what they actually paid. And then refund this amount to Mr B and Mr W together with 8% simple interest from the date it was charged, to the date it's paid to them. If they made a payment at the SVR in November, HSBC should apply the same calculation for this month as well.*

*I should make clear that we aren't able to make this calculation on behalf of HSBC or confirm whether the amount is correct. But I've set out how HSBC should make this calculation clearly above. And, if I do uphold the complaint on this basis, I'd expect HSBC to do so. I see no reason why Mr B and Mr W need to make an overpayment to have any amount they've paid in excess of what was required refunded to them. Nor why the refund should be paid to the mortgage account when it was a payment that Mr B and Mr W made from their own funds.*

*This has no doubt been a stressful time for Mr B and Mr W, having to move to the SVR and then have this rectified by HSBC. But I think the £375 HSBC has offered in compensation for this distress and inconvenience this matter has caused is sufficient. So I'm not going to ask it to make any further payment.*

I invited both parties to respond to my provisional decision by 5 February 2024.

HSBC responded saying:

- Mr B and Mr W did make some payments higher than expected, overall, they have paid less to the mortgages in question than they would have done if the error did not happen. As detailed in our evidence to date they have only made 14 payments of £12,387.35 however, if everything had gone smoothly in October 2022, then the customers would have made 15 payments totalling approx. £12,958.05, therefore they have paid overall less than we would expect.
- With regards to interest, this is not taken by way of payment from the customer. Therefore, the customer has not paid more interest, they did pay a higher payment due to a higher rate, but the interest was applied to their mortgage at the time and has since been taken off the mortgage balance. As above, the amounts actually paid

are less than would have been paid had the error not occurred.

- In more usual cases, i.e. ones that happen to a single mortgage and doesn't involve 3 separate mortgages each repaying the other, where a higher payment has been made, then we would refund the interest to the mortgage and any overpayment to the customer to put them back in the position they should have been. But this case is a lot more complex and as detailed above, less payments have been made overall than would have been had the error not happened.
- If the Ombudsman wants us to refund interest, not only is this irregular, but it would also come from the mortgage balance, thereby increasing the mortgage balance.
- At the same time, can the Ombudsman please also confirm if the interest they are referring to is the refunded amount of £384.20 used to reduce the balance in January 2023. If not, we would request the ombudsman be more specific in what interest the customer is due to have refunded.
- Nonetheless we are happy to bring this matter to a conclusion, but to do so we want to make the Ombudsman aware that what they are asking will increase the customer's debt to HSBC. If we pay the difference of interest, then the customer's mortgage balance will increase by that amount.
- Can the Ombudsman confirm that the customer would like us to increase their debt to HSBC by the amount in question.
- Can the Ombudsman confirm that the customers happy for the bank to recalculate and increase the standard monthly payment as a consequence of this decision.

Mr B and Mr W didn't respond.

The complaint has now been passed back to me to consider again and make 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.

The findings within my provisional decision, and copied above, should be taken as part of this final decision.

I don't fully agree with HSBC's explanation of this being irregular. And I believe that HSBC is overcomplicating this matter with the way it's looking at things.

HSBC has said that Mr B and Mr W made 14 payments totalling £12,387.35. But were it not for the mistake, then they would've made 15 payments totalling approx. £12,958.05.

I can't see any reason why, because of HSBC's mistake, Mr B and Mr W would've made one payment less. And HSBC hasn't clearly explained this to me.

As far as I can see, this dispute comes down to one payment. Mr B and Mr W made a payment higher than they should have for October 2022. That's because they were paying the SVR due to HSBC's error. And HSBC has not done enough in its explanations to persuade me that this wasn't an amount Mr B and Mr W have paid over and above what they should've paid in October 2022. In fact, one of its complaint handlers confirmed in a

letter that this was an amount that Mr B and Mr W had overpaid and initially offered to refund it directly. So there is clearly confusion on HSBC's side as well.

HSBC made the decision that it would refund the overpaid interest amount to the mortgage balance in January 2023. But this was, as far as I can tell, overpaid interest, which was charged to an error by HSBC, and something that Mr B and Mr W actually paid. So, they should've had the option of having this amount refunded to them directly. I see no reason why HSBC should decide that a higher payment charged and paid because of its error should have to be used to reduce the mortgage balance. Whilst this would be beneficial to Mr B and Mr W in that it would reduce the mortgage balance by this amount, it should ultimately be up to them to decide what to do with their money.

If the interest had been applied to the mortgage, but not paid by Mr B and Mr W, then I'd agree it should be refunded to the account. But they actually paid this amount in October 2022. So the loss is a direct one that they have paid.

It's still unclear exactly what has happened here. But I believe HSBC has been given sufficient opportunity to clearly explain exactly why it doesn't believe this additional interest was actually paid by Mr B and Mr W. And it hasn't provided an explanation I am satisfied with or can explain to Mr B and Mr W. Therefore, I think it's fair and reasonable in the circumstances that this amount is repaid to Mr B and Mr W directly.

I accept that refunding this amount will increase the mortgage balance by the amount refunded. But that's only because the overpaid interest was used to reduce the balance in the first place. Something Mr B and Mr W were clear they didn't want to happen. It follows that the monthly payment for Mr B and Mr W's mortgage payment will increase slightly because of this. Again, this is the situation they would've been in in the first place had the error not occurred.

Based on this, I see no reason to depart from my provisional decision. So I'm going to uphold this complaint.

### **Putting things right**

HSBC should work out what the October monthly payment would've been had the mortgage been on the correct interest rate against what they actually paid. And then refund this amount to Mr B and Mr W together with 8% simple interest from the date it was charged, to the date it's paid to them.

HSBC has asked me to confirm the amount I am asking to be refunded. As I understand it, it's the amount of £384.20 that was applied as a credit to their mortgage account on 27 January 2023. This is what Mr B and Mr W have complained about. And this is the only overpaid amount of interest I can see on the account. It should add 8% simple interest from the date this was charged to the date it is refunded.

HSBC has offered £375 compensation for this. I still believe it's a fair amount. If HSBC has already paid this to Mr B and Mr W, then it doesn't need to make a further payment in this regard. If it hasn't made this payment, then it must do so in addition to the interest refund as set out above.

Mr B and Mr W should be aware that by accepting a refund of the over paid interest, this will increase the balance of their mortgage by the refunded amount. Which will in turn increase their payments. I'd expect HSBC to make clear the impact of this once it provides the redress payment.

**My final decision**

I uphold this complaint and direct HSBC UK Bank Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mr W to accept or reject my decision before 12 March 2024.

Rob Deadman  
**Ombudsman**