

The complaint

Mr and Mrs P complain that HSBC UK Bank Plc handled their mortgage application unfairly and gave them poor advice. They said this resulted in them losing the property they wanted to buy due to the delays they encountered.

What happened

Mr and Mrs P completed a mortgage application in October 2022 to purchase a new property. Based on the loan to value (LTV) of the property, HSBC only had to instruct a desktop valuation which was carried out on 10 October 2022. The property was deemed to be suitable security. A mortgage offer was then issued by HSBC.

Mr and Mrs P got a homebuyer's report on the property, and it was identified that spray foam insulation was present. Mr and Mrs P notified HSBC on the advice of their solicitor.

On 22 November 2022, HSBC said they received a fax from Mr and Mrs P's solicitor confirming the presence of spray foam insulation and that the surveyor recommended it should be removed. It was also confirmed that there was a reduction in the purchase price to £528,000.

HSBC said they referred this to their valuations team for their comments and on 1 December 2022, they wrote to Mr and Mrs P's solicitors explaining that after referring the valuation details to their valuer, it was confirmed that the spray foam needed to be removed and that the property was no longer considered to be suitable security.

On 4 January 2023, Mr P contacted the mortgage adviser at HSBC as interest rates had reduced and wanted to take advantage of the lower rates. He also told HSBC that the property purchase price had increased to £539,000 as the seller had decided to remove the spray foam – rather than reduce the price.

A new mortgage offer was issued on 4 January 2023.

The spray foam was subsequently removed, and Mr and Mrs P said that their solicitor had sent a fax to HSBC on 19 December 2022 confirming this, along with a certificate for completion of the work.

HSBC said they were not notified of this until 24 January 2023, when they received a fax from the solicitor confirming this. They said they never received a fax on 19 December 2022.

HSBC said they informed Mr and Mrs P on the 26 January 2023 that a physical valuation would need to be carried out in order to proceed and ascertain if the property was now suitable security. This was carried out on 7 February 2023 and the valuation confirmed the property was suitable security for HSBC to lend on.

Mr and Mrs P told HSBC on 13 February that their sellers had pulled out due to the delay in waiting to exchange contracts.

Mr and Mrs P complained to HSBC as they felt that they caused delays by not responding to

the fax from 19 December 2022 and because of the delays, the people they were buying the house from pulled out.

They said this caused them a great deal of stress as they were expecting their first child at the end of March 2023 so were dealing with uncertainty while trying to prepare for their baby. Mr and Mrs P said they would like an acknowledgement of the mistakes and reimbursement of the costs they incurred such as solicitor fees and compensation for the stress they were caused.

HSBC didn't uphold the complaint. They said they never received the fax from 19 December 2022 and the first they heard about the spray foam being removed was when they received the fax dated 24 January 2023. HSBC said they will not refund the valuation cost as it was Mr and Mrs P's choice to get a homebuyers report and once they cancelled the application, they refunded the £999 booking fee. They said the unfortunate circumstance of the seller pulling out wasn't anything to do with them.

Mr and Mrs P were unhappy with this, so they brought the complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator didn't think that HSBC acted unreasonably and on balance, didn't think that any correspondence had been received by HSBC from the solicitor on 19 December 2022. She also didn't think that HSBC should be responsible for any costs incurred by Mr and Mrs P as she couldn't hold HSBC responsible for the sellers pulling out of the property sale and she didn't think HSBC caused delays.

Mr and Mrs P disagreed with the investigator. They made the following comments:

- They don't understand how HSBC can on one hand say that the property wasn't considered to be suitable security but then proceeded to issue them with a new mortgage offer in January.
- Their solicitor said that someone from their office contacted HSBC on 24 January 2023 to which they were told that no correspondence had been received from the solicitors. The letter of 24 January 2023 was then drafted to HSBC including all correspondence sent to them since 22 November 2022. They said the solicitor checked the fax sent on 19 December 2022 and the results shows 'ok' which means it was sent. It was confirmed that if it hadn't gone through, an error reason would have shown instead.
- Mr and Mrs P said the crux of their complaint is that HSBC lost correspondence which was sent and continued to act as though everything was progressing as they issued a new mortgage offer in January 2023.
- They said they understand that HSBC cannot directly cause someone to pull out of the transaction, but HSBC's actions have had a material impact on it. Their delays due to lost correspondence caused the chain to collapse.

As Mr and Mrs P disagreed with the investigator, they asked for the complaint to be reviewed by an ombudsman, so it's been passed to me to decide.

My provisional decision

Issued a provisional decision on 4 March 2024. I said:

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

Having thought about everything very carefully, I've come to a different conclusion to the one that our investigator reached, and I'll explain why.

I appreciate that Mr and Mrs P feel very strongly about their complaint, and I do empathise that it would have been a very stressful time for them trying to purchase a property while preparing for a baby, and having looked at everything, I think HSBC could have handled things better.

December 2022 fax sent by solicitor

The crux of the issue falls on the fax that Mr and Mrs P say their solicitor sent to HSBC regarding the removal of the spray foam insulation. They have said – as has the solicitor – that this was faxed to HSBC on the 19 December 2022. And because HSBC have said they didn't receive it, this delayed the rest of the process which involved getting a physical valuation to confirm the property was suitable security.

I have seen a copy of the fax that the solicitor and Mr and Mrs P said was sent to HSBC on 19 December 2022 and I can see that the investigator asked HSBC about this. HSBC have still confirmed that this fax was never received and commented on the fact that it said 'reason for error' at the top of the header. When this was queried with the solicitor, they said that their legal support team confirmed the fax had been sent and resulted in an 'ok' result, backing up the fact it was sent.

Having seen this fax, I can see both the 'ok' result and 'reason for error' on the header. It's not for me to say whether this fax did indeed get sent as it's not clear looking at it whether it did or not.

In cases when it's not clear what happened or where the evidence is incomplete or inconclusive, as is the case here, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in light of the available evidence.

Mr and Mrs P are adamant that this fax was sent by their solicitor and HSBC are saying that they never received it.

I am not able to say for sure that this fax was sent without any errors as it's impossible to know that. However, I am more persuaded that HSBC didn't receive it. When they were first notified (based on what they said) of the removal of the spray foam on 24 January 2023, they acted on this pretty much immediately. They referred this to their valuations team who said that a physical valuation was needed which was then carried out. I don't think that HSBC would have received a fax on 19 December 2022 and ignored it so I'm more inclined to think they didn't receive it.

HSBC said they mainly rely on emails which is understandable, and that any solicitors that still use a fax machine tend to then back up those faxes by letter. They said that the fax which was sent on 24 January 2023 was also followed up with a letter which was sent by post – but they didn't get this for the fax of 19 December 2022. I am persuaded that if they had, they would have acted on it.

Like I said, when HSBC did get notified on 24 January 2023 about the spray foam being removed, they acted on this quickly and arranged for a valuation to be carried out on the recommendation of their valuers. The property was then deemed suitable security but it was then unfortunate that the seller pulled out.

I appreciate that Mr and Mrs P understand that the chain can collapse at any point but they believe that had HSBC acted on the fax of 19 December 2022, their seller wouldn't have pulled out as they would have been able to exchange contracts much sooner. But as I've already said, I am not persuaded that HSBC received this fax or indeed lost it.

Mr and Mrs P have argued that their solicitor was told that documents were being added to the closed file because the property wasn't suitable security in December 2022. I haven't seen anything to suggest that this was the case.

We have asked HSBC about this, and they said they allocate documents based on a consumer's profile irrespective of what account numbers or application numbers are included on those documents. Everything that appears to have been sent seems to have been added to Mr and Mrs P's profile so again I can't agree that documents were lost.

Mortgage offer January 2023

I have thought about the mortgage offer that Mr and Mrs P were given by HSBC in January 2023. Mr and Mrs P don't understand why this happened when their property wasn't suitable security in December 2022.

They make a valid point and the contact notes from 4 January 2023 show that Mr P contacted the mortgage adviser asking about the lower interest rates – which is when a new mortgage offer was issued. The notes suggest that Mr P said that he was still waiting to hear from HSBC if the property was going to be deemed as suitable security. But the contact notes I have seen show that HSBC contacted the solicitor on 1 December 2022 letting them know that the property wasn't one they were prepared to lend on.

I can see an internal email from the mortgage adviser to another colleague and she said she didn't know at the time that the property wasn't suitable security, so she proceeded to amend the interest rate and issue a new mortgage offer.

I think this is something that the adviser should have been aware of as it may not have been helpful to issue a new offer when HSBC had already decided not to lend on the property. It's possible that Mr and Mrs P were not made aware at this point based on what they said, that the property wasn't suitable security. And it's more likely that the mortgage application hadn't been cancelled at this point as the mortgage adviser probably wouldn't have been able to issue a new mortgage offer if it had been.

I think what doesn't help is that the desktop valuation that HSBC had carried out didn't flag any issues with the property, but the homebuyers report did. That doesn't mean that HSBC did anything wrong by obtaining a desktop valuation, but it had already been decided on 1 December 2022 that HSBC didn't want to lend.

I don't think that HSBC should have issued a new mortgage offer on 4 January 2023. It should have been noted on the system that they had decided that they were not going to lend on that property. I note that when Mr P called on 4 January 2023, it didn't seem that he was aware at that point that HSBC decided not to lend. That isn't HSBC's fault as they did inform Mr and Mrs P's solicitor. But the fact that HSBC proceeded to issue a mortgage offer when they shouldn't have done, has also confused matters.

Mortgage offers can be withdrawn under certain circumstances. Mortgage offers will set out the circumstances that lenders can withdraw them so it may be that if this had come to light later on, HSBC may have been able to withdraw it, if they were able to.

What should have happened was that when Mr P called on 4 January 2023, he should have been told that even though he wanted to apply for lower interest rates, that HSBC were not able to lend on the property that Mr and Mrs P wanted to buy. It may have come to light at that point that HSBC hadn't in fact received the fax from 19 December 2022.

Even though HSBC told the solicitor in December 2022 that the property was no longer deemed as suitable security, they did say that the spray foam had to be removed – so it seems as though there was still some scope for them to re-consider the application if this was done. And I think it would have been apparent sooner that the spray foam had been removed.

Based on this, things may have progressed sooner, but we can't know for sure whether it would have made a difference as the seller may have pulled out anyway. The situation may have been close to exchange or completion so it's difficult to say one way or the other whether the same thing wouldn't have happened.

In addition to this, Mr and Mrs P's solicitor didn't follow up on the fax from 19 December with a letter by post to HSBC and I can't see that there have been any calls prior to 24 January 2023 (other than Mr P calling on 4 January 2022), to chase up that information.

Because of this, I don't think it would be fair for me to ask HSBC to pay for Mr and Mrs P's solicitors' costs because the solicitor was still carrying out work for a purchase that they were told was not suitable in December 2022.

But I do think that HSBC made an error when they issued a mortgage offer in January 2023 and it's clear that this shouldn't have happened. So I think HSBC should pay Mr and Mrs P £300 in recognition of this. I also think it's fair that they refunded the booking fee of £999 when the application was cancelled. But I don't agree that they should refund the valuation fee that Mr and Mrs P paid for their own valuation as it was their choice to arrange this.

Developments

HSBC responded and didn't have any further comments to add to the provisional decision.

Mr and Mrs P also responded and said they were disappointed, but they didn't have any further representations to make. So they said they were happy to accept what I had said and move forward.

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 understand that Mr and Mrs P are disappointed, but I have nothing further to add to what has already been addressed in my provisional decision. And as HSBC don't have any comments either, I see no reason to depart from what has already been said.

My final decision

For the reasons given in my provisional decision, I uphold this complaint and direct HSBC UK Bank Plc to:

- Pay Mr and Mrs P £300 for the stress and inconvenience they have been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 15 April 2024

Maria Drury
Ombudsman