

The complaint

The fixed rate on Mr H and Mrs A's mortgage with HSBC UK Bank Plc ended on 31 December 2022. They complain HSBC said they could only refix their mortgage in October 2022, then didn't say the policy changed, so they missed a September fix at a better rate.

What happened

Mr H and Mrs A had three parts to their existing lending, but all of these were on a fixed rate which ended on 31 December 2022. They rang HSBC on 6 June 2022, to find out the earliest date that they could fix a new rate. They said HSBC was very clear that they weren't able to fix new rates for the three parts of their mortgage until the start of October 2022.

HSBC then wrote to Mr H and Mrs A on 8 September 2022, sending three letters (one for each part of the mortgage) about the upcoming end to their existing fixed rate. Mr H and Mrs A said there was nothing in these letters to alert them to the fact that HSBC policy on reserving a fixed interest rate for a mortgage had changed, and they were then eligible to reserve a new rate. So they didn't call HSBC until the end of September. They then found out they could have reserved a rate straightaway, when HSBC's letters arrived.

Mr H and Mrs A said they had ended up on a higher rate because of what HSBC did, and as they'd opted for a five year fixed rate, this would cost them a considerable amount more over the fixed interest rate term. They wanted HSBC to offer them the rates they could have secured in early September 2022.

HSBC's case is that it gave Mr H and Mrs A accurate information on the phone, when it told them they could only secure a new fixed interest rate for their mortgage 90 days before the expiry of their existing fixed rate deal. It said its policy then changed, well after Mr H and Mrs A had called, and it started to allow customers to reserve a rate 120 days before their old rate expired. It wrote to all customers to tell them when they could switch, including Mr H and Mrs A. But Mr H and Mrs A didn't ring until some weeks later. When they did get in touch, they secured a new rate on that date. HSBC didn't think it had done anything wrong.

Mr H and Mrs A strongly disagreed. They discussed the content of the three (essentially, identical) letters they had received in detail, and said that there was nothing in these letters to tell them that HSBC's policy had changed, so they could now reserve their rate earlier than they'd previously been told. They said they hadn't, as HSBC asserted, been told that they were eligible to switch from the date of the letter onwards. And they said if they had been informed of the policy change, they would have fixed their new rate right away.

HSBC didn't change its mind, so Mr H and Mrs A asked our service to look into this.

Our investigator didn't think this complaint should be upheld. He said HSBC told Mr H and Mrs A on 6 June that it would send out a letter 90 days before the expiry of their old rate, so they could review the rate. The agent said that letter should be received in the first week of October. At the time of the call, that was factually correct.

HSBC then changed its policy, so that a new rate could be secured 120 days in advance. Our investigator said that HSBC is entitled to change its policies. And he thought the letters sent to Mr H and Mrs A should reasonably have made them aware they were able to apply for a new rate when they received those letters, in early September.

Mr H replied to disagree. He said they'd read HSBC's letter very carefully, and saw nothing to tell them the situation had changed, that they could now apply at 120 days. He wanted to stress that these letters didn't tell them they could review their rate. He also wanted to set the letters against the background of his previous call with HSBC, and said that there was, importantly, no reference in the letter to a change in policy allowing changes up to 120 days in advance, and no specific wording stating that they were eligible to make a switch right away (as of the date of the letter). He and Mrs A had thought this letter was simply a reminder of the upcoming end of their fixed rate mortgage. So he said they continued to believe the earliest date they could switch was the first week in October.

Mr H said he wanted to book an advisor appointment in advance of this, to switch at the earliest possible opportunity, so he rang at the end of September, and discovered then that he was already eligible to switch, and had been for some time.

Because no agreement was reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

The information Mr H and Mrs A were given on their call in June 2022 was, broadly speaking, accurate at the time. I note that at one point the advisor wrongly agreed with Mr H's summary, that the earliest he could change his rate was 1 October, and I understand it was actually 90 days before the expiry of his existing rate, so in fact, a couple of days after this. But that isn't material for this complaint. So, for present purposes, I don't think HSBC did anything wrong on that call.

HSBC subsequently changed its policy on how far in advance customers could book a new rate. And it wrote to its customers earlier than it had previously indicated. The letter sent to Mr H and Mrs A was dated 8 September 2022. I think Mr H and Mrs A had been eligible, under HSBC's new policy, to change their rate for around a week by the time HSBC's letter issued, but I think it does take some time to implement a policy change such as this, and I don't think it was unreasonable or unfair here for HSBC to have taken a few days to contact Mr H and Mr A, not long after its policy had changed.

It appears that HSBC intended these three letters, which are identical other than in the details about the respective parts of the mortgage, to alert Mr H and Mr A to the option they had to fix a new interest rate right away. But Mr H and Mr A have pointed to what they say is rather ambiguous language, which they say meant they didn't realise they were able to change their rate right away.

HSBC says its letters made four separate references (and included a QR code) pointing customers to its website, which HSBC said detailed the lead-in times for a rate switch which were applicable at this point. It considers that Mr H and Mrs A ought to have responded to these letters.

I think it's important to set these letters, and indeed my provisional decision here, in the overall context of this case. HSBC had issued clear and specific advice to Mr H and Mr

A about when they could fix a new interest rate, on its call with them in June 2022. It said on this call that its advisors wouldn't even discuss rates with Mr H before the start of October, because that was the earliest he could switch, and the earliest he could choose from rates available at the time.

The three letters that HSBC subsequently sent, in September 2022, do appear to me to be in very general terms. There are a number of general pieces of information about how to reserve a new mortgage rate, but there is no clear statement that Mr H and Mrs A are now eligible to switch.

It's not my decision here that these letters would be insufficient to alert HSBC's customers in general to the fact that they were able to switch rates from that point onwards. But I do think there is force in the argument that Mr H and Mrs A make, that when set against the background of very clear advice received from HSBC about when they could reserve a new rate, there just wasn't anything in these letters to make Mr H and Mrs A think the previous advice they'd received had now changed.

I understand HSBC's argument it had told Mr H and Mrs A it would write to them to tell them they were eligible to switch in October, so it thinks the letters it sent in September should have made them think something had changed. But I note HSBC said it would write to them in early October to say they could then secure a rate, to take effect from 1 January 2023. And the letters Mr H and Mrs A received in September, didn't say that.

I also understand HSBC's argument that it didn't have to write to Mr H and Mrs A at all, to notify them that they were eligible to switch rates. But if it chooses to do so, and also to indicate to them that they should anticipate receiving these letters, then I think that these letters ought to be clear. And unfortunately, in the particular circumstances of this case, I don't think these letters were clear.

I think if HSBC's letters had been clearer, then Mr H and Mrs A would have been likely to ring HSBC right away, and they would then have discovered that they were already entitled to refix their mortgage interest rate. HSBC's letter was issued on Thursday 8 September 2022, so I think it's likely Mr H and Mrs A would have received the letter, and called HSBC on the following Monday, 12 September.

At the end of September 2022, Mr H and Mrs A reserved a five year fixed interest rate, with no fee, at 3.92%. If they had spoken to HSBC on Monday 12 September, they could have reserved a mortgage on the same terms, at 3.78% fixed.

I think it would provide a fair and reasonable outcome to this case, for HSBC now to implement that rate on Mr H and Mrs A's mortgage, backdated to 1 January 2023. So that's what I currently propose to ask HSBC to do.

I invited the parties to make any final points, if they wanted, before issuing my 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.

Mr H and Mrs A replied to say they had nothing further to add. They said they could see that all of the information they had submitted previously had been considered in arriving at the decision, and they supported and welcomed the outcome.

HSBC also replied, to strongly disagree. It said it didn't think I had actually identified an error made by the bank, so it didn't see how the complaint could be upheld and the customers put back in the position as if one not occurred.

HSBC noted I'd said there was no material error during the call Mr H had with HSBC in June 2022. I did say the information Mr H was given on that call was broadly accurate at the time.

HSBC also noted I hadn't suggested that HSBC was required to tell all of its customers of a change in policy. Again, that's an accurate summary of my provisional decision on this specific point. I made no general finding on this issue, as it wasn't in question here. I did, however, say that if HSBC chooses to write to Mr H, and also to indicate to him that he will be receiving a letter, then that letter ought to be clear, and broadly speaking, in the indicated form. Here, I said I didn't think that's what had happened.

HSBC said I had also agreed with it that there were no errors in the reminder letters. And it pointed to a section of my provisional decision where I said *"It's not my decision here that these letters would be insufficient to alert HSBC's customers in general to the fact that they were able to switch rates from that point onwards."* Whilst it may not be material to the case, I should pause here to say that unfortunately I do think HSBC is over-reading my decision somewhat here. All this sentence does, is confirm that I am confining my decision here to the issues in the case. So I am not considering wider issues, such as whether this letter was deficient overall, including in cases where the customer had not been given specific advice on the same point previously. I'm just looking at what happened here, to Mr H and Mrs A.

HSBC went on to say that its letters weren't personal recommendations, and it was neither practical nor reasonable for the letters to be tailored to the customer's individual circumstances, beyond the obvious system details of their mortgage such as the rate expiry date, which HSBC then flagged was included in its letter.

HSBC omits here to deal with what I think is a rather obvious question, in the context of this particular case, and which I think lies at the core of Mr H and Mrs A's complaint. If HSBC was able to include personal details like the couple's mortgage rate, the outstanding balance, the loan to value, and the expiry date for the current rate, then it's not at all clear why HSBC wouldn't also confirm the date on which they could apply for a new rate.

Mr H and Mrs A's argument is based on the fact that not only did HSBC not tell them precisely when they could apply for a new rate, it didn't even include in its letter a more general statement that they could apply **now**. So, in their very particular circumstances, and especially given the clear and much repeated advice I've listened to on the call they had with HSBC about when they could remortgage (not before October) they felt this letter was misleading.

HSBC went on to say the inference of my decision is that the letter should have explained the information these customers were correctly told on a call was no longer true. And HSBC said that was obviously not possible. It said the reminder letter is a system generated letter which invites customers to review their rate, which was both correct and possible at the time, so HSBC said it couldn't understand how I had concluded this was an error.

Again, I think HSBC is somewhat over-reading my decision here. I'm not suggesting that HSBC ought to have written directly to Mr H and Mrs A personally, to correct information it had previously given them personally, which was no longer accurate. I am suggesting that somewhat clearer language in this letter would have meant that Mr H, who had previously been given very clear advice on when he could remortgage, could then reasonably have been expected to realise the position had changed.

HSBC also repeated that there was no regulatory requirement to send reminder letters at all, and if it hadn't done so, Mr H would be in the same position as he is now. I think this point is dealt with above.

So HSBC said it sympathised with Mr H and Mrs A, but it believed the outcome was simply the result of unfortunate timing rather than an error, so it did not think the complaint should be upheld. For the reasons I've set out above, I don't agree with this. That may perhaps be because, on some of the key points here, my argument is not quite as HSBC appears to have understood it. I hope the above assists with that.

Finally, HSBC said I had concluded that, as the letter was issued on Thursday 8 September 2022, Mr H and Mrs A would have received the letter in sufficient time to have called HSBC on Monday 12 September. But HSBC said the letter was only sent second class, so it didn't think it would have been received as soon as Monday 12 September. And this, HSBC felt, was important, because interest rates changed on 14 September. So HSBC felt that even if Mr H had called on receipt of the letter, it didn't think he would have received a better rate than he's currently on.

The postal service states that second class post will be delivered in two to three working days, including Saturdays. So I do think we can reasonably expect that an item posted second class on a Thursday would normally arrive by the following Saturday, or Monday at the latest. Given how concerned Mr H was about this mortgage, I don't think there's any reason to conclude that Mr H would not have called HSBC until the following Wednesday, which is the point at which rates would have changed. I still think it's most likely that he would have called HSBC on Monday 12 September, as my provisional decision set out.

So, for the reasons set out above, I haven't changed my mind in this case. I'll now make the decision I originally proposed.

My final decision

My final decision is that HSBC UK Bank Plc must substitute a rate of 3.78% fixed for five years, for the rate which Mr H and Mrs A took in late September 2023. HSBC UK Bank Plc must backdate this change to Mr H and Mrs A's mortgage to 1 January 2023, and refund to them any money they have overpaid. HSBC UK Bank Plc must also pay interest on each refunded amount, at 8% simple per annum from the date each refunded amount was paid to the eventual date of settlement.

HM Revenue and Customs requires HSBC to take off tax from this interest. HSBC must give Mr H and Mrs A a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr H to accept or reject my decision before 19 April 2024.

Esther Absalom-Gough

Ombudsman