

## **The complaint**

Mr W complains that HSBC UK Bank plc misled him and treated him unfairly when he asked about and later went ahead with having a new property built on land which was mortgaged to it, and then wanted to sell the original property and split the title. As a result, he says he has experienced significant financial loss, as well as inconvenience and upset.

## **What happened**

Mr W had obtained planning permission to build a house in the garden of his home, which was mortgaged to HSBC. In early 2021 he contacted HSBC to get its permission before starting building work.

Mr W says the process was difficult and HSBC misunderstood what he was planning to do. It also required a valuation to be carried out and a copy of the plans. The valuation was done, paid for by Mr W, in April 2021. HSBC then wrote to Mr W saying it would release the land on which the new house was to be built from its charge.

This, however, wasn't what Mr W wanted at that stage. He wanted to keep the existing property (which I'll refer to as Property 1) and land on the same title until the new house (Property 2) was built, and then split the title. HSBC then wrote again on 30 April 2021 agreeing that the title could be split once building work was finished.

In June 2021 Mr W took some additional borrowing on his mortgage, at a fixed interest rate of 1.74% until September 2023. In October 2021 he took a new interest rate product on his original mortgage borrowing, because the initial rate on that part of the mortgage was ending. He chose a five-year fixed interest rate of 1.14%. An early repayment charge (ERC) was payable on both parts of the mortgage if they were repaid in full within the respective fixed rate periods.

In December 2022 Mr W's solicitors wrote to HSBC confirming that work on the property had been completed and Mr W had agreed to sell Property 1 – so Mr W wanted HSBC to release Property 1 from its charge and retain its charge against Property 2 and the remaining land. He needed the charge to be released in order for the sale to complete. He wanted to sell Property 1 and move into Property 2, keeping the HSBC mortgage on Property 2.

But HSBC wouldn't release its charge. It said the address of its security was Property 1 and it couldn't simply transfer this to Property 2. It also wouldn't offer Mr W a new mortgage on Property 2 because Property 2 didn't yet have its own title number.

Mr W says no other lender would offer a mortgage on Property 2 for the same reason. As a result, having agreed to the sale of Property 1, he had to restructure his finances and raise money privately to repay the HSBC mortgage. He repaid the mortgage in late April 2023, including an early repayment charge (ERC) of just over £8,000. He also lost the remainder of the five-year fixed interest rate deal he had on the main mortgage at 1.14% and a few months of the 1.74% rate on the smaller part of the mortgage. He says he also incurred various expenses and significant stress and anxiety.

Mr W complained to HSBC that he had discussed his plans with it multiple times, and it had never told him it wouldn't accept Property 2 as security. He said it already had a charge over Property 2 since its existing charge was over both properties and all the land under the original single title. It had told him to apply for a new mortgage on Property 2, when it should have known there was no point because it would never have approved the application. He also said that if HSBC had explained the situation to him earlier, he wouldn't have taken a fixed interest rate in October 2021 and he wouldn't have gone ahead with the development in the way he did, because of the difficulties in refinancing the mortgage on the same title once Property 2 was finished.

HSBC said it had agreed to Mr W's proposal to build Property 2 and split the title later. But it said it had also told Mr W in early 2021 that Property 2 would be considered new security and he would therefore need to apply for a new mortgage on it, which would be subject to its usual lending criteria. It didn't offer any compensation.

Our Investigator found that HSBC had made a mistake by wrongly telling Mr W in March 2021 that he would be able to port, or transfer, his mortgage interest rate product to Property 2, subject to its lending criteria at the time of such a request. But she didn't think Mr W had lost out as a result of that wrong information, because there was never any guarantee he would have been able to do this, and he had taken a new fixed rate product in October 2021 without any advice from HSBC. The ERC had then been applied in line with the mortgage terms. The Investigator recommended that HSBC pay Mr W £300 compensation.

HSBC accepted that recommendation, but Mr W did not. He said that the crux of his complaint is not whether he could port his mortgage product, but the issue of HSBC's security and the wrong information HSBC gave him during his initial enquiries in early 2021. He said that HSBC had a charge over Property 2 from the outset, because it was built on land forming part of Property 1's title. HSBC gave its permission for Property 2 to be built. In asking to split the title, he simply wanted HSBC's existing charge over Property 2 to continue. All it had to do was release its charge over Property 1. He considered that he had followed HSBC's instructions but they had turned out to be wrong – and he couldn't have known that.

The complaint was referred to me. I came to the same overall conclusion as our Investigator about what HSBC should do to put this complaint right, but for different reasons. I therefore issued a provisional decision to give Mr W and HSBC the opportunity to make any further submissions they wanted me to consider before I make my final decision.

### **My provisional decision**

I said in my provisional decision:

I think that HSBC made mistakes and gave Mr W wrong information. I don't, however, think that Mr W lost out as a result.

I understand Mr W's point that porting his mortgage product isn't the key issue here. He never got to the stage of making a porting application. Had he done so, HSBC is unlikely to have allowed it because, under its lending criteria (and in common with many other mortgage lenders), it doesn't permit borrowers to port an existing mortgage product to a property they already own. However, the losses Mr W is claiming don't flow from that, because he wasn't in a position to make such an application. The stumbling block was HSBC's refusal to allow the property title to be split in such a way that HSBC would be left with a charge over Property 2 alone. I don't consider that HSBC gave Mr W wrong

information or misled him about this at any point during its discussions and correspondence with him.

In April 2021 HSBC gave Mr W its permission for him to build Property 2. It also told him he would need to instruct a solicitor in order to arrange for the property title to be split after Property 2 had been completed. There's no dispute about any of this, and this is what Mr W had asked HSBC to agree to.

Importantly, though, what HSBC didn't do was give an undertaking or agreement to move its charge to Property 2 alone or to grant a mortgage secured on Property 2 alone. By the time Mr W asked it to do that, he had already agreed the sale of Property 1 but had not arranged to split the title first.

HSBC's charge was over Property 1. As Mr W has pointed out, Property 1 and Property 2 were on the same title – so HSBC had both properties as security. But this didn't mean it could simply release its charge over Property 1 and keep a charge over Property 2. I'm satisfied that it couldn't. Property 2 didn't yet have its own separate title, and HSBC's charge was over the title to Property 1 (although at the time the title included Property 2).

As Mr W later found out when he looked into re-mortgaging to other lenders, no other lender would agree to a mortgage on Property 2 either until it was on its own separate title. I realise that this left Mr W in an extremely difficult position and he had to find other means to repay the mortgage. But I don't think this was a result of anything HSBC did wrong. I think the situation arose because Mr W exchanged contracts for the sale of Property 1 before arranging for the title to be split. I don't think HSBC could reasonably have foreseen that this would happen, and so I don't think that I can fairly hold it responsible for the losses Mr W is claiming.

This is not to say that HSBC didn't make mistakes. I think it did – it initially misunderstood Mr W's plans, thinking that he wanted to convert two existing properties into one, and it caused delay. It also wrongly told Mr W that he may be able to port his mortgage product to Property 2 when it was finished, and later that he could apply for a mortgage on Property 2 before the title had been split. All of that was unhelpful and caused Mr W avoidable inconvenience and upset. In all the circumstances, however, I think £300 compensation is a fair award in recognition of that.

Finally, I think it was reasonable for HSBC to require a valuation to be carried out before consenting to the building work at the beginning, since the build would affect its security and in the longer term a detached property was to become two semis. And I think HSBC was entitled to apply the ERCs on redemption. The mortgage offers were clear that ERCs would apply if the mortgages were repaid in full during the fixed interest rate periods.

I realise that Mr W feels very strongly about this matter and this isn't the outcome he was hoping for. However, for the reasons I've explained, I can't fairly require HSBC to compensate him any further.

### **Responses to my provisional decision**

HSBC accepted my provisional decision, but Mr W did not. He said, in summary, that there are factual inaccuracies and ambiguities in my provisional decision. In particular:

- My provisional decision said that HSBC had told him in early 2021 that Property 2 would be considered new security and he would need to apply for a new mortgage on it – but this isn't what happened and it didn't tell him that.

- He had re-engaged with HSBC about arranging for it to release its charge over Property 1 before exchanging contracts for the sale of the property in February 2023, and HSBC should have known that the title couldn't be split while he still owned both properties – it's standard practice for a title to be split at the point of sale.

### **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've also listened to Mr W's phone call with our Investigator on 4 September 2024 as he requested. Having done so, I've come to the same conclusion I reached in my provisional decision.

I said in my provisional decision: "HSBC said it had agreed to Mr W's proposal to build Property 2 and split the title later. But it said it had also told Mr W in early 2021 that Property 2 would be considered new security and he would therefore need to apply for a new mortgage on it, which would be subject to its usual lending criteria. It didn't offer any compensation."

To be clear, this was a summary of HSBC's position and its response to Mr W's complaint. It wasn't a conclusion that I reached. I did however conclude that HSBC didn't give Mr W wrong information or mislead him about agreeing to allow the title to the property to be split in such a way that it would be left with a charge over Property 2 alone.

The property over which HSBC held its charge was Property 1 – that was the original house and all the land included in Property 1's title entry at the Land Registry. But Mr W wanted to keep the existing title number for Property 2 and create a new title number for Property 1. This was a different proposition for HSBC than simply releasing Property 2 from its existing charge.

I note that Mr W hadn't in fact exchanged contracts for the sale of Property 1 when he began trying to arrange for the title to be split in December 2022, although he had accepted an offer to buy the property. That doesn't however change my conclusion about the outcome of this complaint. I remain of the view that HSBC couldn't reasonably have known before it was approached when Mr W was ready to sell Property 1 that he would want to go about splitting the title in this way, by creating a new title for Property 1 – the original property over which his HSBC mortgage was secured.

It wasn't for HSBC to advise Mr W about how to go about splitting the title, and I haven't found anything to indicate that it did so. That was a matter for Mr W and his legal advisors, not for HSBC.

For these reasons, I can't fairly conclude that HSBC should compensate Mr W for the losses he's claiming.

### **My final decision**

My final decision is that HSBC UK Bank plc should pay Mr W £300 in settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 October 2024.

Janet Millington  
**Ombudsman**