

The complaint

Miss B and Mr C complain that HSBC UK Bank Plc trading as first direct didn't refund a fee paid in relation to their mortgage application when they decided not to proceed with their property purchase.

Mr C has dealt with the complaint. He asks for compensation for wasted time, financial stress and pressure caused by the situation.

What happened

In early 2024 Miss B and Mr C applied to first direct for a mortgage. They wanted to buy the property they lived in. first direct recommended a mortgage and issued a mortgage illustration. Mr C paid the booking fee for a fixed rate product. The mortgage illustration said the booking fee was non-refundable. The mortgage adviser told Mr C and Miss B the fee was non-refundable and the only time first direct would refund it was if first direct was unable to go ahead with the mortgage.

In May 2024 Miss B and Mr C told first direct they'd decided to buy a different property. After a valuation of the property, first direct issued a mortgage offer.

In July 2024 Mr C told first direct they'd decided not to go ahead with this purchase. He asked that first direct refund the £490 booking fee, which it declined to do.

Mr C says:

- it was irresponsible for first direct to offer a mortgage as they'd since visited the property and found evidence of damp.
- first direct bears some responsibility as its valuer failed to recognise the poor condition of the property. He said it would be financially irresponsible to buy it. He considers having advised first direct of a significant risk to its security it should have offered more support to ensure good customer outcomes.
- they've had two failed purchases with no support offered by first direct, despite its responsibility under the Consumer Duty to assist customers during the cost-of-living crisis. He said first direct didn't engage in reasonable dialogue.
- in order to recoup their loss (the booking fee) they'd have to spend more money on another prospective purchase. They do not have £490 to spare.
- first direct didn't state the fee is explicitly non-refundable, only that it's non-refundable unless first direct can't proceed. He said first direct is relying on vague wording for grounds to refund the booking fee. Mr C says he was misled that if he had valid concerns about a property there'd be a reasonable conversation about the sustainability of the lending decision.
- first direct's response to the complaint was disjointed.

Our investigator didn't uphold the complaint. She said first direct had made it clear the fee was non-refundable. first direct didn't say it was unable to proceed with the mortgage. It was Miss B and Mr C who decided not to go ahead.

Mr C didn't agree. Mr C said they'd incurred £3,000 of legal fees and other costs and spent considerable time and suffered distress dealing with the complaint. He said there was no evidence presented that it was financially viable for them to look for another property to buy.

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.

Was the product booking fee fair?

The product booking fee of £490 was non-refundable. So Mr C and Miss B risked losing the fee if their purchase fell through and they didn't find another property to buy within six months, or they decided not to go ahead with the mortgage.

There were benefits to paying the fee. When Mr C paid the booking fee he secured a fixed interest rate product. This protected Mr C and Miss B if interest rates increased and allowed them to plan their finances. first direct offered flexibility in that Mr C and Miss B could keep the product if they changed their minds about the property they wanted to buy. It said if a property was cheaper and the loan to value changed, they could choose a product in a lower loan to value range (which would have a lower interest rate). The product remained available to Mr C and Miss B for six months.

Taking all this into account, I think first direct met the requirements of the Consumer Duty in offering a product that met the objectives of customers such as Mr C and Miss B and provided fair value relative to the benefits.

Mr C and Miss B didn't go ahead with the mortgage. That doesn't mean the booking fee became unfair. The benefits secured by the booking fee remained, even if Mr C and Miss B didn't take advantage of them.

Did first direct give Miss B and Mr C clear information about the booking fee?

The Consumer Duty requires businesses to provide clear and accurate information, at the right time, to ensure consumers can make informed decisions. They must also communicate in a way that isn't misleading.

first direct needed to tell Mr C and Miss B that the booking fee was non-refundable before they paid it. That way they could make a decision whether to pay the fee, knowing that it was not refundable. I think first direct did this.

Miss B and Mr C spoke to first direct's mortgage adviser in April 2024. I've listened to a recording of this call. first direct told Mr C and Miss B that the product booking fee was non-refundable. Mr C asked what would happen if their purchase fell through. The mortgage adviser said the rate was held for six months and could be transferred to a different property. It told Miss B and Mr C the only time it would refund the fee was if it was unable to go ahead with the mortgage – if anything changed or something came up with the valuation. Mr C said he was happy with this.

first direct sent a mortgage illustration to Mr C which said the booking fee was non-refundable. Mr C called first direct back after this to pay the fee.

Mr C says first direct is relying on vague wording for grounds to refund the booking fee. I don't agree. first direct was clear that the fee was non-refundable. It said the only time it would refund the fee was if it was unable to go ahead with the mortgage.

Was it irresponsible for first direct to offer a mortgage?

In May 2024 Miss B and Mr C told first direct they'd decided to purchase a different property. first direct instructed a mortgage valuation. It instructed a suitably qualified valuer – a member of the Royal Institution of Chartered Surveyors (RICS). The valuation was satisfactory for mortgage purposes and first direct issued a mortgage offer in June 2024.

I think first direct was entitled to rely on the expert opinion of the valuer when making a lending decision. It had no reason to think the property wasn't suitable security.

Should first direct have changed its lending decision when Mr C told it he'd seen damp at the property?

Mr C contacted first direct in July 2024 to complain. He wanted first direct to refund the booking fee. He said it was irresponsible for first direct to offer to lend, given that they'd seen evidence of damp on a recent visit to the property.

first direct forwarded Mr C's comments (that the property has damp and wet walls especially in the small bedroom with the chimney) to the valuer. The valuer said they'd carried out a valuation only and not a survey. A section of damp might not have been apparent, especially as it was a warm, dry, sunny day. The valuer said if the purchase hadn't completed the purchasers should have a survey – especially for a period property – or if this was after completion they should contact a reputable contractor.

first direct suggested to Mr C and Miss B that they obtain a timber and damp report. Mr C and Miss B didn't want to pay for additional reports on the property.

I think first direct responded appropriately. It asked the valuer to respond to Mr C's comments. I don't think, based on the valuer's response, first direct ought fairly to have retracted its offer to lend to Mr C and Miss B.

It seems Mr C is saying that first direct should decide it's unable to go ahead with the mortgage because he told it he saw damp at the property.

I can't fairly require first direct to do that. The surveyor said the property was suitable security for the mortgage. Without evidence that isn't the case, I don't think I can fairly find it's unreasonable for first direct to rely on the expert opinion of the valuer.

first direct's response when Mr C raised concerns

Mr C raised his concerns in mid-July 2024 and first direct issued a final response on 25 July 2024. I think first direct's response was appropriate, prompt and clear. It checked the situation with the valuer. It didn't agree to refund the booking fee and explained why.

Is there any other reason why first direct ought fairly to refund the booking fee?

Mr C says no evidence has been provided that they are in a position to proceed with a purchase, and they've already spent a lot of money on legal fees and other costs. He says they can't afford to lose the booking fee. He says first direct didn't offer support.

first direct is required to offer support to meet customer's needs and ensure they can make

use of products as anticipated and without unreasonable barriers. I think it did that here. It reminded Mr C they could still use the product for a purchase, within the six-month time period. I don't think first direct had fairly to do more.

It's understandable that Mr C and Miss B are disappointed that their purchases didn't go ahead, especially after incurring costs. That wasn't due to any error by first direct.

It's unclear if Mr C is saying their circumstances have actually changed or that first direct can't provide evidence as to their current situation. But this doesn't change what happened and whether first direct treated them fairly. first direct gave Mr C and Miss B clear information about the booking fee before they paid it. It was Mr C and Miss B, not first direct, that decided in July 2024 not to proceed with their purchase and, it seems, not to look for another property. They might have good reasons for that, but I don't think it was due to any error by first direct.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr C to accept or reject my decision before 9 January 2024.

Ruth Stevenson
Ombudsman