

The complaint

Mr X complains that he tried to cancel his new fixed interest rate mortgage deal with HSBC UK Bank Plc, the day before it took effect, but HSBC's offices were closed. He contacted HSBC the next day, but it said then that he was too late.

What happened

Mr X said he had a mortgage with HSBC, which he now wanted to pay off in full. He said he told HSBC about this well before a new fixed interest rate period started. But at the end of July, he realised he needed a little more time to arrange for the money to be transferred to HSBC, so he tried to call HSBC on 31 July. He told us he wanted HSBC to cancel his fixed interest rate deal. Mr X said if he'd been able to speak to HSBC on 31 July, then he would have been able to pay off the mortgage with no early repayment charge ("ERC").

Mr X said he wasn't able to get through to HSBC. He said he now understands that its phone lines had closed. Mr X said there was no other way for him to get this message about cancelling the upcoming deal through to HSBC on 31 July. He called HSBC again the next day, but by then HSBC said it was too late to cancel the mortgage deal. It had already been applied to his mortgage.

Mr X said this means he's going to have to pay almost £3,000 more now to clear his mortgage. Mr X thought HSBC should have agreed to cancel the fixed interest rate deal, and switch him to the standard variable rate. That would mean his payments were higher in the short term, but it would have given him time to pay off the mortgage in full without incurring an ERC. Mr X said HSBC wouldn't do that, which he felt was completely unreasonable.

Mr X said he complained, but it only took HSBC a couple of days to tell him that it wouldn't change its mind.

HSBC said it wouldn't waive Mr X's ERC now. It said Mr X had signed in March 2024 for the new fixed interest rate deal which was to be applied to his mortgage on 1 August 2024. Once he had accepted this offer, and HSBC had applied it to the mortgage, then there was no right of withdrawal without paying the ERC.

HSBC also told us that it had spoken to Mr X not long before this mortgage deal started, on 24 July. It told him then that if he wanted to repay the mortgage, he should do that by 31 July before the new fixed rate started, or an ERC would be applied. But HSBC said it had also suggested to Mr X, on this call, that he could cancel the pending deal if he wanted more time to repay. In that case he would just revert to the standard variable rate on 1 August. But Mr X didn't ask for the rate to be cancelled.

HSBC said it wasn't its fault that Mr X had tried to call it on 31 July after its offices had closed. It didn't think it had done anything wrong.

When this case came to our service, HSBC said that it does advertise its opening hours on the correspondence it issues, and it sent our service a number of examples of documents

sent to Mr X which told him when HSBC's offices are open. And it said Mr X had been able to call it during its office hours on a number of occasions, so it didn't know why he hadn't been able to do this on 31 July.

Mr X also contacted us again, to tell us about some difficult personal circumstances he'd been dealing with, just before the fixed interest rate on his mortgage took effect. I won't set those out here, but I have taken those circumstances into account.

Our investigator didn't think this complaint should be upheld. He said that the ERC became applicable on Mr X's mortgage as soon as his new mortgage deal went live. He said the documentation sent to Mr X made clear when the new product commenced and when it needed to be cancelled by. And subsequent calls confirmed this. So, although our investigator understood that Mr X had been dealing with some difficult personal circumstances, he thought Mr X had ample opportunity to cancel the product before the deadline.

Mr X disagreed. He didn't think we'd given sufficient weight to the circumstances he'd been dealing with. And he said he'd tried to contact HSBC on 31 July, which was the only deadline he'd been given. He had never been told he needed to cancel by a specific time on 31 July.

Mr X said he still felt it would be fair for HSBC to allow him to pay off his mortgage without an ERC. He said he was happy to pay the higher interest rate on the mortgage from 1 August onwards, and he thought that was an outcome fair to both parties in all the circumstances. He said it wasn't fair for him either to be stuck in a long term mortgage, or to have to pay an ERC, because of simply a matter of an hour or so.

Mr X also said that just because he was able to speak to HSBC on some days, we shouldn't assume that he should have been able to call HSBC on the day before the deal was applied to his mortgage.

Mr X said the illustration for this new mortgage deal told him the ERC would only apply from 2 August, so he thought he should still have been in time to cancel on 1 August, when he did speak to HSBC.

Our investigator said the mortgage illustration did assume the deal would start from 2 August, but he said that assumed start dates like this aren't uncommon in mortgage documentation. They work as a way for a lender to show how things will operate. But our investigator said Mr X had two relevant calls with HSBC, when he was given the correct information. One was 8 March, but the other was 24 July 2024. That was just before Mr X's deal was due to be applied, and Mr X had rung then to see when he would need to cancel the new product.

Our investigator said HSBC's agent had been clear on the dates, confirming 31 July as the end date of the current product and that the new product went live 1 August. The agent explained how the new product needed to be cancelled before it went live, if Mr X wanted to avoid paying an ERC. So our investigator said Mr X was aware of when the deadline was.

Mr X wanted his complaint to be considered by an ombudsman, and he said if the contract stated that the new term would start on 2 August, then that was the contract he'd agreed to, and HSBC couldn't change that with information given on a call. He also said the outcome was unfair in all the circumstances.

HSBC also made some final comments. It said that at no point was Mr X told the new rate would start on any date other than 1 August 2024. And it wanted to stress to our service that

Mr X's complaint was always that he was unable to contact HSBC to pay off his mortgage before 31 July, before the new rate commenced on 1 August. His complaint was based on the opening times of HSBC's contact centre on 31 July. So HSBC said it couldn't agree he was under any confusion at the time, about the deadline for cancelling the deal.

This case was then passed to me for 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.

I've reached the same overall conclusion on this complaint as our investigator.

Mr X has repeatedly said that he tried to cancel this fixed interest rate deal the day before it went live, but also that he did speak to HSBC on the day it went live, and he asked HSBC to cancel the fixed rate then. He thinks that would have provided a straightforward way of resolving things, and he said that just insisting he must now pay an ERC if he wants to pay off his mortgage now, provides an outcome which isn't fair for both parties.

I should say from the outset that I don't think asking HSBC to waive the ERC in this case would clearly provide the simple and universally fair solution that Mr X suggests. An ERC isn't simply profit for a mortgage lender. It does cost mortgage lenders to be able to guarantee that someone's mortgage interest rate won't change for a set period, and that cost is usually paid by the lender at the very start of the fixed interest period. In the ordinary course of things, this cost would be recovered over the fixed interest period, but sometimes people want to redeem mortgages before this period is up. That's why the ERC is included in a fixed interest mortgage deal, it's so that lenders can ensure they will still recover those costs of lending, if someone redeems a mortgage before the fixed interest rate period ends.

So that ERC isn't just a windfall for HSBC. It's important to note that financial services rules mean that the ERC charged has to be a reasonable pre-estimate of the costs incurred to the lender as a result of borrowers paying their mortgages back early.

And that means Mr X isn't asking HSBC just to forego some profit it would otherwise make. His suggested resolution means HSBC wouldn't be charging him anything for the costs of lending to him at a fixed rate, although he didn't cancel that deal early enough to make sure those costs weren't incurred by HSBC. That's the background against which I have to assess this case.

I know Mr X had experienced some very difficult personal circumstances not long before his new mortgage deal took effect and I've been very sorry to hear about that. I also appreciate that he was out of the country, so had to manage the time difference in contacting HSBC. But I can hear that Mr X was able to speak to HSBC a number of times this year, including on 4 and 24 July, as well as 1 August.

Mr X asked us to look at whether HSBC had (whether intentionally or not) actually only agreed to change his mortgage from 2 August. If that was the case then he said it perhaps should have cancelled when he spoke to it on 1 August, which would be before this new deal took effect. I've looked at Mr X's offer, and although it does refer to 2 August, that date is only used for the purposes of illustration. I can't see that Mr X was ever told his new mortgage deal would only start on that date.

Mr X's old fixed interest rate deal did end on 31 July 2024, so I would expect the new deal to be applied on 1 August. And, most importantly for the purposes of assessing whether what's happened here is fair and reasonable, I think that's what Mr X expected too.

On 24 July, Mr X rang HSBC to check when his new deal would take effect, and what the last date was for paying off his existing mortgage without an ERC. At the start of that call, the agent confirmed that the new deal was taking effect at the end of July, and suggested Mr X could cancel his new deal, if he didn't want to be tied into it. Mr X didn't take up that offer.

So I know Mr X said there was a lack of clarity about when his new offer would start. But I do think that Mr X was clear on the call on 24 July, about how long he had to pay this mortgage off, if he wanted to avoid the ERC he'd agreed to with his new mortgage deal.

Mr X also suggested that if the deadline was 31 July, then he'd tried to comply with that, because he'd tried to ring then. I don't think it's unreasonable for HSBC to say that it must receive a request for cancellation whilst its offices are open. And I have been able to see that HSBC does widely publicise those opening hours.

I know that Mr X will be disappointed, but in all the circumstances of this case, I'm not able to say that it is fair and reasonable for HSBC to have to waive his ERC now. And that means this complaint won't be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X to accept or reject my decision before 16 January 2025.

Esther Absalom-Gough
Ombudsman