DRN-5197282

The complaint

Mr and Mrs W complain that HSBC UK Bank Plc trading as first direct did not give them enough information about the terms of a new interest rate product they'd agreed. They say they missed out on the chance to agree a lower interest rate as a result.

What happened

In 2018, Mr and Mrs W switched to a new five-year fixed rate mortgage with first direct.

On 2 August 2023, Mrs W spoke to first direct over the phone and arranged a new interest rate product – a five-year fixed rate of 5.44%.

During the phone call, first direct said the existing rate ended on 15 January and that there would be an early repayment charge if the rate switch was completed before then. It asked Mrs W when she would like the new rate to be applied, to which Mrs W replied, *"at the latest date possible*". First direct then said, "*so if I set it up from 16th January*…". Mrs W then asked if any lower rates were to become available between now and that point that they would be able to access those. First direct said they could.

A mortgage offer and illustration was sent to Mr and Mrs W. It said that the information in the illustration "*remains valid until 2nd February 2024*". Mr and Mrs W each accepted the offer on 7 and 8 August 2023 respectively.

On 16 January 2024, Mrs W spoke to first direct. She wanted to switch to a lower interest rate, of 4.59%(?), that was now available. But first direct said it could not do so because the previous fixed rate had expired on 15 January and the new fixed rate started on 16 January – so Mr and Mrs W were too late to change the interest rate.

Mr and Mrs W complain that first direct did not give them enough information to understand when the new interest rate would start. They said they believed they had until 2 February 2024 to change the rate. Mr and Mrs W said they were only told when the existing fixed rate would end in their November 2023 mortgage statement and during the phone call when the new rate was arranged in August 2023.

Mr and Mrs W do not consider that first direct gave them enough information to understand when the existing rate would end and when the new rate would start, particularly bearing in mind the requirements under the Consumer Duty.

The Investigator thought the complaint should be upheld. He did not consider that, once Mr and Mrs W had chosen the new interest rate, first direct had given them enough information about the latest date they could choose a different interest rate. He thought if first direct had given Mr and Mrs W enough information to make a timely, informed and effective decision, they would have chosen a different fixed rate on 15 January 2024.

So to put things right, the Investigator said that first direct should re-work the mortgage as if Mr and Mrs W had taken a fixed rate of 4.59% and either refund the resulting overpayments with interest or use the overpayments to reduce the mortgage balance and explain how that affects their overpayment balance. The Investigator also said that first direct should pay Mr and Mrs W £100 for the trouble and upset caused by this matter.

Mr and Mrs W accepted what the Investigator said. First direct did not. It made a number of points, including:

- Its customers react to its existing communication and processes. Some customers already change rates after they have chosen a new fixed rate but before its inception. This shows that customers are engaged and aware of the process and their options.

- The annual statements confirm the end date of the existing interest rate product.

- When it spoke to Mrs W by phone it confirmed the existing rate would end on 15 January 2024. Mrs W confirmed that and the latest date they could come back to select an alternative rate.

- It did not agree that Mr and Mrs W were in an uninformed position. They knew when the existing fixed rate would expire and when the new fixed rate would start. It also told Mr and Mrs W that they needed to let it know if they wanted to change rates before the new rate started.

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.

There was potential harm for Mr and Mrs W if they took an interest rate on their mortgage that was more expensive than it needed to be. They would end up paying more on their mortgage than they needed to. It is clear that Mr and Mrs W's objective was to obtain the cheapest rate that first direct would offer them – noting, in particular, Mrs W's query to first direct when discussing the new rate as to whether she and Mr W would have access to lower rates that became available before the switch was completed.

With this in mind, first direct should have considered what information it needed to provide Mr and Mrs W to enable and support them to achieve their objective, in line with the expectations of it under the Consumer Duty. It was also required to support Mr and Mrs W's understanding by ensuring its communication met their information needs, was likely to be understood by them and equipped them to make decisions that were timely, effective and properly informed.

Mr and Mrs W needed information about when their existing interest rate would end, when the new fixed rate would start and how long they had to choose a different rate if they wished. Bearing in mind Mr and Mrs W chose the new interest rate around five months in advance of the rate changing, they also had a need for the information to be confirmed in writing, so they could check their understanding.

The 2018 mortgage offer said that Mr and Mrs W would pay 60 payments under the fixed rate and that it assumed the rate switch would occur on 1 February 2019. I can't see that it said the rate would end on 15 January 2024, although this was subsequently confirmed in the annual statements sent to Mr and Mrs W – the latest being that of 5 November 2023.

I accept that there was a discussion about when the existing interest rate would end and when the new interest rate would start in the phone call where Mrs W arranged the new interest rate.

The offer for the new interest rate did not say when the new interest rate would start (or make any reference to the end date of the existing rate), only that the information in the illustration would remain valid until 2 February 2024. So I can see why Mr and Mrs W may have taken this date to be the cut-off point for making changes to their selection.

First direct has told us that is all of the information Mr and Mrs W were given about when the existing fixed rate would end and when the new interest rate would start. In the circumstances, I do not consider that was sufficient. I say that because there was scope for confusion in the information first direct gave Mr and Mrs W.

I agree that Mrs W was given information that was clear, fair and not misleading during the phone call when the new rate was agreed about the start and end dates of the rates, and how long she and Mr W had to choose a different rate if they wished. But that was around five months before the existing rate ended and the new rate began. I can see how consumers might not remember the exact dates that were discussed during a phone call. So providing information that far in advance without confirming in writing may not be sufficient to meet a customer's information needs, and I don't think it was sufficient for Mr and Mrs W in the circumstances here.

I also agree that the annual statement set out when the existing fixed rate was due to end. But I don't consider that information was enough for first direct to show that it had met Mr and Mrs W's information needs. It did not give them all of the information they needed in respect of the rate switch. It did not tell them when the new rate would start.

Neither the offer for the existing rate nor that for the new rate set out when the existing rate ended or when the new rate began. I could see how a consumer might understand that they had until 1 or 2 February 2019 before the new rate started, in view of the information that was provided in the illustration for the new rate.

As far as I can see, Mr and Mrs W were only given all of the information they needed to make an informed choice about what to do during the initial phone call. But I've already found that wasn't sufficient in view of the length of time from that call until the new rate started.

Other than that, I can't see the start date for the new interest rate was set out in a clear, fair and not misleading way in any of the paperwork I have seen. I consider it ought to have been. Otherwise, Mr and Mrs W would have to search their paperwork – and if they had done so, they would only have received a partial answer to what they were looking for and would have to make assumptions about when the new rate would start. I don't consider that they were given enough information to make a properly informed, effective and timely decision about whether to choose a different interest rate.

Therefore, I do not consider first direct has treated Mr and Mrs W fairly and reasonably.

Putting things right

Where a business has not acted fairly, we look to put the affected party in the position they would have been in had they been treated fairly in the first place.

I consider if first direct had confirmed in writing when the existing rate would end, when the new rate would start and how long Mr and Mrs W had to make any changes to the interest rate, then it is likely that Mr and Mrs W would have acted on that. I say that because we have evidence that Mr and Mrs W always intended to take advantage of any lower rates while they could, having asked first direct about the option of doing so when arranging the new rate. And they duly attempted to choose a new interest rate – but they were a day late.

I consider it likely that had Mr and Mrs W been given full and fair information about the interest rate, they would have switched on 15 January 2024. So I agree with the Investigator that it would be fair for first direct to give Mr and Mrs W the interest rate that was available on that date – and that they wanted to choose when they spoke to first direct on 16 January 2024. So first direct should re-work Mr and Mrs W's mortgage as if the two-year fixed interest rate of 4.59% applied from 16 January 2024.

Mr and Mrs W will likely have overpaid, as they are currently on a higher interest rate. The overpayments should be refunded directly to them, with interest at 8% simple per year. Or they can choose to leave the overpayments on the mortgage. But if Mr and Mrs W choose to leave the overpayments, first direct should explain how that would affect their overpayment allowance.

It is clear Mr and Mrs W have been caused unnecessary distress and inconvenience because of what happened. They had the stress and worry of being too late to switch rates even though a cheaper rate was available. I consider the Investigator's recommendation of £100 is fair in all of the circumstances.

My final decision

My final decision is that HSBC UK Bank Plc trading as first direct should:

- Recalculate Mr and Mrs W's mortgage as if the two-year fixed interest rate of 4.59% to Mr and Mrs W's mortgage from 16 January 2024.

- If after the above recalculation Mr and Mrs W have overpaid first direct should give them the choice whether to:

    - Have the overpayments refunded with interest at 8% simple per year from the date each overpayment was made until date of settlement. If first direct considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs W how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate; or

    - Leave the overpayments on the mortgage to reduce the balance. First direct should write to Mr and Mrs W and explain how that will affect their overpayment allowance and any other consequences of taking that action.

- Pay Mr and Mrs W £100

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 6 January 2025.

Ken Rose
Ombudsman