DRN-5730367

The complaint

Mrs O complains that solicitors appointed by HSBC UK Bank Plc completed a re-mortgage without her consent. She asks that this is reversed.

What happened

Mrs O had a residential mortgage with another lender. In June 2024 she applied to HSBC via a broker for a consumer buy to let mortgage on her property. This was a “let to buy” mortgage to raise funds towards the purchase of a new residential property. Mrs O intended to port her existing interest rate product to the new residential property. HSBC issued a mortgage offer in July 2024.

Mrs O says the remortgage completed in early September 2024 without her consent. This was before she’d found a tenant for her property or a property to buy. She had to pay her lender an early repayment charge (ERC). She was still living in the property, in breach of the buy to let mortgage terms and conditions. The buy to let mortgage is for a larger amount and has a higher interest rate, which Mrs O says is a financial burden. Mrs O says the upset and confusion meant she couldn’t look for a property to buy within the six-month porting window. She repaid the unused funds to HSBC and in doing so paid another ERC.

Mrs O said the solicitors were appointed by and acted for HSBC, and wouldn’t even respond directly to her complaint. She says this indicates their primary obligation was to HSBC, which she says makes HSBC responsible for their actions. Mrs O said it was unacceptable and negligent for the solicitors not to ask for her explicit consent to complete the re-mortgage.

Mrs O asks that the re-mortgage is reversed and HSBC compensates her for the costs involved. She asks that HSBC commits to putting a process in place so that this doesn’t happen again.

I sent a provisional decision to the parties explaining why I intended to uphold this complaint. In summary, I said while the solicitors are a third-party business independent of HSBC, the evidence suggested they arranged completion in accordance with instructions from HSBC. I didn’t think it was fair for the re-mortgage to complete without Mrs O’s agreement. I also thought Mrs O could have done more to reduce her losses. I said HSBC should compensate Mrs O for some of her costs and losses.

Mrs O said she acted promptly to contact HSBC when aware of the problem, and expected HSBC and its solicitors to take swift action to sort matters out. She accepted my provisional decision. She said she’d recently seen a property she was interested in buying.

HSBC didn’t agree. It said Mrs O or her broker should have told the solicitors if she wanted to delay completion. It said the broker shouldn’t have made an application if Mrs O wasn’t ready. HSBC said the information sent to Mrs O by the solicitors said they’d complete the mortgage as soon as possible unless Mrs O told them otherwise. It said the solicitors couldn’t have known Mrs O hadn’t yet found a property or didn’t require the funds as soon as possible.

HSBC said Mrs O could have notified it sooner after completion and her delay meant it didn't have time to act. HSBC said it didn't make an error and nor did the solicitors.

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.

HSBC issued a mortgage offer in July 2024. The mortgage offer said Mrs O didn't need to sign or return it to accept the mortgage offer. It said HSBC would take the signing of the mortgage deed as Mrs O's acceptance of the mortgage offer. It also said solicitors would be instructed to carry out the legal work once the seven-day reflection period had ended.

The mortgage offer said HSBC would pay the legal fees for the standard legal work undertaken on its behalf. It said the conveyancer instructed by HSBC would be unable to give Mrs O any advice about the mortgage or provide independent legal advice, and has no liability or responsibility to her for the service provided.

HSBC instructed solicitors in July 2024. It instructed a firm which is regulated by the Solicitors Regulation Authority.

HSBC received a certificate of title from the solicitors at the end of August 2024. This said the completion date was 2 September 2024. HSBC wrote to Mrs O on 30 August 2024 to confirm it had released the mortgage funds to the solicitor.

When HSBC received the certificate of title from the solicitors with the completion date, I don't think it could reasonably have known that Mrs O hadn't consented to – or was even aware of – the completion date. It couldn't have known whether or not she'd found a property to buy or had a tenant in place. HSBC assumed the certificate of title was correct and released funds accordingly.

The solicitors sent an email to Mrs O on 29 August 2024 setting the completion date of 2 September 2024. Mrs O was out of the country and says she had limited access to email. She says she didn't see the email, and had she seen it she'd have responded immediately. Mrs O says she returned home to find the re-mortgage had completed. Mrs O provided a copy of her e-tickets for a flight out of the UK on 23 August 2024 and a return flight on 10 September 2024.

Mrs O's broker says he was also away from the office at that time. A colleague forwarded the emails to Mrs O. They assumed the solicitors had spoken to Mrs O before setting the completion date.

It must have been upsetting for Mrs O to return home to find the remortgage had completed. Mrs O incurred significant costs due to the remortgage. The terms of the HSBC mortgage say she can't live in the property. Mrs O says she still intends to buy a property, but this was on hold until this matter is sorted out. I can understand why Mrs O asks that this is put right.

I can only fairly require HSBC to reverse the remortgage or compensate Mrs O if I find it made an error and it was this error that resulted in Mrs O incurring costs and losses.

Is HSBC responsible for the actions of the solicitors?

The solicitors are a third-party business, independent of HSBC and operating under a different regulatory regime. While Mrs O says the solicitors were acting primarily for HSBC, that doesn't necessarily mean that HSBC is responsible for their actions.

However, having read the available evidence, I think HSBC is responsible here.

HSBC provided comments from its solicitors. They said that while it's technically correct that they proceeded to completion without Mrs O's consent, this is not relevant. They say under the terms of HSBC's legal instructions the solicitors are "*not required to seek additional approval ahead of completion*". They say they "*scheduled a completion date based on the information provided by the customer in the questionnaire and the instructions provided by HSBC*".

The solicitors say the emails sent to Mrs O and her broker on 29 August 2024 "*provided the customer with notification as required*". They say consent is assumed if the customer doesn't object, as is standard in fees assisted remortgage transactions. HSBC said it didn't consider the solicitors "*to have acted incorrectly when they actioned the transaction as instructed and were not provided with any conflicting instructions by the customer or broker, despite advance notice being given."*

We asked HSBC for a copy of its instructions to its solicitors. The instructions didn't set out how completion should be arranged, or how this should be communicated to the customer. HSBC says it doesn't state this explicitly and the solicitor would understandably complete cases as soon as possible unless the customer says otherwise.

This suggests to me that the solicitors arranged completion in accordance with their instructions from HSBC. Therefore, if the remortgage completion was arranged in error or unfairly, I think HSBC bears responsibility for this. HSBC hasn't disputed being responsible for the solicitors actions – it says no error was made.

Was completion arranged in error or unfairly?

HSBC says that Mrs O didn't provide a completion date to the solicitors. Nor did she tell the solicitors that she didn't want to complete yet. Mrs O says she didn't expect completion to go ahead without her consent.

In response to my provisional decision, HSBC referred to two documents which it said gave Mrs O clear information that the remortgage would complete as soon as possible, unless she said otherwise, and alerted her to the potential timescales. The first was the welcome letter sent by the solicitors on 31 July 2024 which said:

> "The law firm aim to complete your remortgage as soon as possible. However, sometimes unexpected issues can arise which may result in a delay. The law firm will keep you informed of the reason for any delay and the current situation."

The second was the solicitors frequently asked questions, which was sent to Mrs O in August 2024 which said:

> "Your law firm will complete the mortgage as soon as they are able, unless otherwise advised by you. The completion date is dependent on your law firm receiving all the required information from you and your lender. A standard remortgage takes on average 25 working days to complete from receipt of the mortgage offer from the mortgage lender. The most common items that delay conveyancing are…"

We asked Mrs O what she'd understood by the solicitors saying they'd complete as soon as possible. She said she thought this meant once she'd said she was ready to complete the solicitor would proceed. She'd thought completion would happen after she'd found a property to buy and move into and secured tenants for the current property. She said she didn't understand why they'd expect her to want to complete when she hadn't secured the purpose for which the funds were intended.

Having re-read the documents that HSBC refers to, I think the context could suggest that – despite the solicitors efforts – there could be delays. I can't fairly agree with HSBC that this information was sufficiently clear that Mrs O should reasonably have known that the solicitors would complete the mortgage without consulting her unless she explicitly told them not to do so.

HSBC provided a copy of the questionnaire that the solicitors asked Mrs O to complete. Mrs O signed and dated the questionnaire 19 August 2024. The solicitors received the completed questionnaire with ID documents and the signed mortgage deed from Mrs O on 22 August 2024.

The frequently asked questions says customers that don't want to complete straight away should still return the documents immediately as this enables the solicitors to prepare for their requested completion date, even if it's in six months' time. I don't think Mrs O thought that by returning the documents she was authorising completion to go ahead immediately.

In response to the question in the questionnaire about her preferred completion date Mrs O wrote "*in process of purchasing new residential*". She added a note that the amount of the surplus from the re-mortgage might change as she planned to increase the remortgage offer.

Mrs O didn't ask the solicitor not to complete the mortgage – but nor did she say she wanted to complete in early September 2024 or as soon as possible. If anything, her response about her preferred completion date suggests she wasn't ready to complete.

HSBC referred to the frequently asked questions saying "A standard remortgage takes on average 25 working days to complete..". I don't know if Mrs O would reasonably have thought her remortgage to be standard. Mrs O wasn't replacing her mortgage on a like to like basis – she was taking out a consumer buy to let for a larger amount to fund the purchase of a new residential property.

HSBC says the solicitors didn't know Mrs O hadn't found a property and didn't know she didn't need the funds yet. It says there's no requirement for the buy to let mortgage and the property purchase to be simultaneous. It says there was nothing to prevent Mrs O going ahead with the remortgage and then looking for a new property at her convenience.

While that's true, it would be an expensive option. Mrs O would pay interest on the larger loan (at a higher rate than her current mortgage) before it was needed and before she had rental income. She'd start the clock on the six-month porting window for her existing mortgage. She'd have a buy to let mortgage which required her to move out of the property. I can't see there was any benefit to Mrs O in arranging matters this way, which suggests to me that Mrs O didn't expect the remortgage to complete so soon.

The solicitors could simply have checked with Mrs O whether or not she was ready to complete. Mrs O's comments in the questionnaire about the completion date ought reasonably to have alerted them to the need to do so.

HSBC says Mrs O's consent to the completion date was assumed as she didn't object. It says this is standard in fees assisted remortgage transactions. Mrs O could have been clearer that she didn't want to complete. But in fairness I don't think she knew this was necessary. I don't think HSBC (or the solicitors) did enough to make Mrs O aware of this.

HSBC says the solicitors chose a completion date in accordance with its instructions and the information provided by Mrs O. I think Mrs O's comments in the questionnaire when asked about her preferred completion date (that she was "*in process of purchasing new residential*" and planned to increase the remortgage offer) ought reasonably to have alerted them to the possibility that she wasn't ready to complete. I think the solicitors ought to have checked this was what she wanted. I don't think it was sufficient to send an email giving her two business days' notice of completion and proceed when she didn't respond.

There was a misunderstanding here. HSBC and the solicitors assumed Mrs O would want to complete the remortgage as quickly as possible. Mrs O didn't expect it to complete before she'd found a property to buy. Both parties could have been clearer in their communications. But on balance I think HSBC – and its solicitors – have more responsibility for the situation Mrs O found herself in. They didn't make Mrs O aware that the mortgage would complete unless she expressly said otherwise. They didn't say the mortgage would complete on two business days' notice if she didn't raise an objection. And I think Mrs O's responses in the questionnaire ought reasonably to have alerted them to the risk that this wasn't what she expected or wanted.

I think it's unfair for HSBC to say that it was Mrs O's responsibility to tell the solicitors if she changed her mind. I don't think Mrs O changed her mind – she just wasn't yet ready to complete.

Did Mrs O miss opportunities to stop completion?

HSBC says Mrs O had opportunities to stop completion. She could have stated in the questionnaire or in other correspondence with the solicitors she didn't want to complete yet. I've responded to that point above. HSBC says Mrs O – or her broker – could have responded to the solicitors' emails in late August 2024 to say that she didn't want to complete yet.

The solicitor sent an email to Mrs O on 27 August 2024, saying it had been unable to contact her by phone. The solicitor asked for a copy of the tenancy agreement or confirmation that she wouldn't be living in the property after completion. Mrs O replied to say she wouldn't be living in the property at completion.

HSBC says Mrs O could have said in her reply that she didn't want to complete yet. Equally, the solicitor could have said they were in the process of arranging completion within the next few days. That might have prompted a response from Mrs O. There's no mention of a completion date in the solicitors email and nothing to suggest completion was imminent.

The solicitor sent an email on 29 August 2024 (a Thursday) with the proposed completion date of 2 September 2024 (the following Monday), and a separate email the same day attaching a completion statement. Mrs O says she didn't receive these emails as she was overseas with limited access to email.

I don't think it's fair to say that Mrs O should have made more effort to check her emails at the end of August 2024. She wasn't aware that an important email might arrive that she'd need to respond to immediately. HSBC and its solicitors didn't tell Mrs O that this was how completion would be arranged.

Does the involvement of a broker mean HSBC is not responsible for what happened?

HSBC says this was a broker application, so the broker was Mrs O's point of contact at application stage. This complaint isn't about the broker, and I'm not making any findings as to whether the broker made an error. I'm only considering whether HSBC made an error.

The broker's comments suggest they didn't expect a let to buy remortgage to complete before Mrs O had found a property to buy. This suggests to me that the broker didn't make Mrs O aware of this possibility.

HSBC says the broker shouldn't have submitted an application if Mrs O wasn't ready. I don't think that's reasonable. Mortgage offers are usually valid for six months. Having an offer in place meant Mrs O knew what funds she'd have available when she was ready to complete a purchase. There was no requirement for her to complete within a short period – or at all.

The broker received the email from the solicitor in late August 2024 setting the completion date. He says he assumed Mrs O had agreed this with the solicitors. This seems surprising when the broker must have known Mrs O hadn't found a property to buy yet. It's unfortunate that the broker didn't respond to the solicitors or HSBC, to ask if Mrs O had agreed to the completion date. I don't know if this might have stopped completion.

There were opportunities for all of the parties to communicate more clearly. I must fairly take into account here that the solicitor contacted Mrs O directly about the arrangements for completion. HSBC says the solicitor arranged completion in accordance with its instructions and the information Mrs O provided. I don't think it's fair to find that the brokers failure to intervene at the end of August 2024 means HSBC isn't responsible for the remortgage completing when it did.

Should Mrs O have taken further steps to reduce her loss after the remortgage completed?

HSBC said the re-mortgage could have been reversed prior to the previous lender submitting its notification to discharge its charge. It says the previous lender submitted this on 16 September 2024, before Mrs O contacted the solicitors regarding the incorrect completion.

Mrs O says she was out of the country and not immediately aware of the re-mortgage. Her return flight arrived in the UK in the afternoon of 10 September 2024. Mrs O says she saw a large amount of money in her account on 11 September 2024, which she initially thought was an error. When she saw it had come from HSBC's solicitors, she contacted her broker to ask what had happened – this was on 12 September 2024.

Mrs O raised her complaint with HSBC on 13 September 2024, asking HSBC to reverse the remortgage. The evidence provided by Mrs O suggests she sent this by email at 18.05. HSBC says it didn't receive the email until after 9pm on 13 September 2024 (a Friday). HSBC provided a copy of the email sent by the broker to the solicitor saying Mrs O hadn't authorised completion. This was sent at 15.15 on 13 September 2024.

HSBC says due to Mrs O's delays it had no time to act. Both HSBC and the solicitor were made aware of Mrs O's concerns before the start of the working day on 16 September 2024 – the solicitor during the previous working day. I agree though that they had only a short time to act before the previous lender submitted its notification to discharge its charge.

Mrs O says she had limited access to emails while she was overseas. But she had some access – for instance she replied to the email on 27 August 2024. It's unfortunate Mrs O didn't see the emails from the solicitors about completion before she returned. But after Mrs O returned to the UK I think she could have contacted HSBC sooner.

Mrs O knew on 11 September 2024 there was a problem of some sort, and by 12 September 2024 she knew the remortgage had completed. In the circumstances, I think it would have been reasonable for her to contact HSBC and/or the solicitors without delay. If Mrs O had contacted HSBC on 12 September 2024, HSBC might have been able to contact the other lender in time to reverse completion, or at least ask it to pause the process of removing its charge while the matter was looked into. Mrs O could have contacted her previous lender to tell it she hadn't intended the mortgage to be redeemed, and to ask it to pause action to close the account and remove the charge. If Mrs O had raised her concerns more quickly, it might have been possible to reverse the re-mortgage and reduce her costs.

This doesn't remove responsibility for the re-mortgage from HSBC. And HSBC and its solicitors could have responded more quickly and proactively when contacted by Mrs O. There was nothing to stop HSBC contacting Mrs O's previous lender after receiving Mrs O's complaint, to see what could be done to help Mrs O.

Mrs O says she put her plans to buy a property on hold while the matter is sorted out. She says the unexpected remortgage made the situation more chaotic and complicated.

Mrs O was surprised to discover the re-mortgage had completed while she was overseas. She needed some time to work out what had happened and how this might affect her plans. But I don't think this stopped Mrs O from looking for a property and making a porting application. This was after all what Mrs O said she'd intended to do when she applied for the mortgage. She had six months in which to find a property and port the mortgage. Had she done so, her ERC would have been refunded and she'd have kept the lower interest rate until it expired. If Mrs O had tried to find a property and port the mortgage within the six-month porting window and been unable to do so, I could consider what redress was fair and reasonable in those circumstances.

Mrs O could have raised her concerns about the remortgage sooner. She could have tried to find a property and port her mortgage. Because Mrs O didn't do this, I think she didn't reasonably do enough to try to reduce her losses. I don't think it's fair and reasonable in the circumstances to require HSBC to compensate her for the ERC she paid to her previous lender and the loss of the lower interest rate product.

Mrs O returned the surplus funds to HSBC after making the first repayment in October 2024 at the higher interest rate. She says she realised this might continue for six months or more without any guarantee of finding a suitable property. Mrs O didn't want to pay interest on the funds she wasn't using, which I can understand. I don't think this stopped Mrs O looking for a property to buy. She could for instance have asked HSBC to re-lend the funds.

Mrs O paid an early repayment charge to HSBC when she repaid the unused funds. If she repays the HSBC mortgage within the product term she'll pay a further ERC. I think HSBC should refund or waive this. The re-mortgage should not have happened when it did and I don't think Mrs O should have to pay a charge to get out of the HSBC mortgage.

Putting things right

On balance, I think the misunderstanding that led to the completion of Mrs O's mortgage before she was ready was largely due to errors by HSBC and/or the solicitors acting in accordance with its instructions. I think HSBC should take steps to allow Mrs O to move forward from the situation she's in. I think it's fair and reasonable to require HSBC to do the following.

1. Refund the ERC and any other charges it applied when Mrs O repaid the unused funds in October 2024. It should add 8% simple interest to this amount from the date the additional funds were repaid to the date of settlement.* This is to compensate Mrs O for being without these funds since October 2024.
2. Consider fairly any application Mrs O submits for additional borrowing so that she can proceed with her plan to raise funds for the purchase of a residential property.
3. Waive any ERC if Mrs O repays the remaining mortgage balance before the earlier of the

expiry of the current interest rate product or the date falling 12 months after Mrs O accepts my decision. This will allow Mrs O to re-mortgage elsewhere if this suits her plans better.

4. Consent to Mrs O living in the property for 12 months from the date she accepts my decision, without any additional charge. This will give Mrs O time to decide what to do and arrange matters.
5. Pay compensation of £500 for the upset this has caused Mrs O. I think this is fair and reasonable given the amounts of money involved, the stress this has caused and the time that it has taken to sort out.

For the reasons set out above, I don't think it's fair and reasonable to require HSBC to compensate Mrs O for the ERC she paid to her previous lender or for her losing the lower interest rate.

If Mrs O remains concerned that the solicitor acted incorrectly she can consider contacting the Legal Ombudsman, the Solicitor's Regulation Authority or take advice as to what steps might be available to her.

*If HSBC withholds tax on this interest it should provide a tax certificate to Mrs O if she requests one.

My final decision

My decision is that I uphold this complaint. I order HSBC UK Bank Plc to take the steps and make the payments set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 29 August 2025.

Ruth Stevenson
Ombudsman