

complaint

Mr and Mrs B complain that HSBC UK Bank Plc reneged on its offer to let them part settle a loan.

background

In 2008 Mr and Mrs B took out a mortgage with HSBC, secured on their home. They fell into serious financial difficulties, and third parties obtained interim charging orders on their home. In May 2013 HSBC offered to allow them to settle their debts if they repaid £15,000. That sum was not paid at the time, and HSBC said it would refer the matter to its solicitors. In fact, nothing happened until 2017.

In July 2017 Mr B asked for a settlement figure, with a view to releasing the charge. This time, HSBC was not prepared to accept £15,000. Correspondence continued into 2018, and the eventual outcome was that HSBC asked for £46,936.22 (which was the principal without the interest). Mr B complained, as he insisted that HSBC should adhere to its original offer to accept £15,000 in final settlement. HSBC said that offer had expired in 2013 and so it was no longer bound by it. Mr and Mrs B brought this complaint to our Service in 2018. Mrs B has been represented by her husband. Mr B also complained that a repayment of £900 seemed to have gone missing.

Our investigator agreed with HSBC that its original offer had expired in 2013 when it was not taken up. She said that HSBC was now entitled to ask for a larger amount. She suggested that if Mr and Mrs B were still in financial difficulties, then they should provide HSBC with their income and expenditure so it could take their circumstances into account. But she didn't think HSBC had done anything wrong.

Mr B asked for an ombudsman's decision. He asked for an explanation of why HSBC had put forward three different settlement figures in 2018, and which one was correct. He also asked about the missing £900 payment, and also about what had happened to a £7,000 discount he had been offered.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I do not uphold it. I will explain why.

On 2 May 2013 HSBC sent Mr B an email in which it said the following:

“We would be willing to accept £15,000 as a full and final settlement ...
Please note that these funds are to be deposited within 30 days for the successful completion of this agreement.
I look forward to your acceptance of the agreement within the next 14 days.”

On 13 May Mr B agreed to pay £15,000, but said he couldn't pay all of it by the proposed deadline. The next day, HSBC replied to say this:

“I acknowledge receipt of your email enclosing the acceptance of the Bank's proposal of a full & final settlement at £15,000 ... The Bank would however request you to deposit £10,000 within May 2013 and the residual balance of £5,000 by 30th July 2013.”

That deadline was later extended to the end of August. But the new deadline was missed too.

On 5 September the bank wrote:

“Please note that in the absence of the settlement amount being deposited into the account within the next three days, the Bank will consider the agreement null and void...”

No payment was made, and so on 30 September HSBC refused to allow any further time and said it would refer the matter to its solicitors. (In fact, solicitors were not instructed, and instead HSBC instructed a third party to collect the debt on its behalf, between November 2013 and October 2014. During this period Mr B paid £900. No further action was taken until 2017, and HSBC says it wrote off the debt, which was £47,023.22.)

Since HSBC had always made it clear all along that the offer was subject to a time limit, and that time limit (after being extended) expired without any of the £15,000 being paid, I think that the offer expired on 8 September 2013. It follows that HSBC was no longer bound by it, and it not have to accept £15,000 when the matter was raised again in 2017 and 2018. Four years later, when Mr B again asked to settle, the bank was entitled to ask for more.

In July 2017 Mr B asked the bank for a settlement figure. He didn't mention the figure of £15,000, and shortly later he offered to pay £12,000. So it appears that he did not consider the 2013 offer to still be in force either. That was not mentioned until the bank rejected his offer of £12,000, when he offered £15,000 instead, and insisted that they had to take it.

HSBC countered (in February 2018) with £57,689.50, which it wrongly thought was the total amount then outstanding, because it had overlooked an earlier repayment of £900. (HSBC has since recognised this error, and said that the correct figure should have been £56,631.32.) In March, as a gesture of good will, it reduced this figure to £51,082.56, a discount of about £6,600 from its original (wrong) figure. Four days later HSBC reduced this figure by a further £1,000. I think this is the £7,000 discount Mr B has asked about. (It's actually a discount of £7,606 off the wrong figure, or £6,549 off the corrected figure.)

It was at this point that Mr B asked what had happened to the £900 payment he had made four years earlier. HSBC wrongly told him that no such payment had been received. After Mr B provided evidence, HSBC agreed (on 13 April) that £900 had been received and apologised for its error. It reduced its proposed settlement figure again, this time to £47,023, which it said was the outstanding principal without any interest. Since that is a reduction of more than £900, I think that HSBC did enough to address that issue.

This means that the £900 payment has been used to pay off £900 in interest. But since HSBC did not have to write off any interest – it had only agreed to write off interest as a gesture of good will – I don't think it would be fair of me to order the bank to reduce its settlement figure by £900. HSBC was entitled to ask for the full £56,631.32, so its offer to accept £47,023 amounts to a discount of over £9,000, or ten times the overlooked payment.

In subsequent emails, HSBC quoted two more settlement figures, which were £46,963.22 and £46,936.22. Mr B has asked for an explanation of this. The bank's answer, which I accept, is that the figure of £47,023 should have been £47,023.22, but it was rounded down. It included a valuation cost of £60, which should not have been passed on to Mr B. £47,023.22 minus £60 is £46,963.22, but due to a typing mistake this was written as

£46,936.22. The difference is £27. HSBC has agreed to accept the lower figure. That is why the latest figure is £87 less than the figure which was given on 13 April 2018.

I think that HSBC is entitled to ask for a settlement figure of £46,936.22 if it wants to. It has already written off the whole debt, and it is not actively pursuing Mr and Mrs B for the debt. It has not sought to enforce the charge. However, it says that there is enough equity in Mr and Mrs B's property to pay the debt if it is sold, so it is not willing to release the charge for less. Mr B disputes that there is enough equity in the property, but I have not seen evidence about the value of the property, so I cannot comment on it. If Mr B has evidence about how much the house is worth, then I would encourage him to share this with HSBC.

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 Mr and Mrs B to accept or reject my decision before 4 November 2019. But if we don't hear from them, then we will presume that they reject it.

My final decision concludes this Service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Richard Wood
ombudsman