

complaint

Mr and Mrs C complain about a decision by HSBC Bank plc (trading as first direct) to withdraw Mr C's banking facilities. This means they've no longer got an account linked to their jointly held offset mortgage with first direct. Mr and Mrs C say it's a condition of their mortgage that at least one first direct current or savings account is linked to their mortgage so the bank is in breach of contract. And, as a result, they can't now offset their mortgage account.

To resolve this complaint Mr and Mrs C told us they want first direct:

- to honour their contractual obligations to allow Mr C to continue to offset, and
- to return interest Mr and Mrs C have paid since Mr C's banking facilities were withdrawn.

background

When Mr and Mrs C complained, first direct didn't uphold the complaint. In summary, it said:

- it did its best to try and assist when Mr C first made the bank aware of his financial difficulties in October 2010
- it gave him contact details so he could get free independent impartial advice about his money problems
- to allow him time to do this without impacting on his banking, the bank moved the payment date of his first direct personal loan to the end of the month to prevent a default from being issued
- it also amended Mr and Mrs C's mortgage to interest only to reduce outgoings in the short term and offered the option of looking at a payment break
- a payment offer, received via a debt management company Mr C paid for advice, was unacceptable. Usually the bank would withdraw banking facilities at that point and pass the debt onto its debt collection agency. Instead, it delayed the withdrawal of facilities for five weeks to allow Mr C time to open an account elsewhere
- after banking facilities were withdrawn, in December 2010, Mr C's personal loan was closed and the debt transferred to his current account. This was standard procedure and done to enable first direct to reduce the interest Mr C would otherwise incur and monitor the repayments. Interest was frozen at 0% and the repayments he offered were accepted for an initial period of six months
- to help Mr C further, and to avoid passing the debt on for collection, this arrangement was renewed for a further 12 months - first direct continued to accept the payments from Mr C's debt management company (right up until 2012) even though the amount was lower than the bank would normally agree to

- this was done to give Mr C the chance to change his circumstances and to keep the debt with first direct (as Mr C told the bank he didn't want his debt passed to a debt collection agency)
- in 2012, Mr C remained unemployed and couldn't increase his monthly repayments to an acceptable amount. It was only then the bank issued a final demand and the debt passed on for collection.

Our adjudicator was concerned that first direct hadn't fully explained things. He felt it was unclear why Mr C's banking facilities had been withdrawn when it looked as if he'd operated his mortgage account and current account satisfactorily. He felt that first direct appeared to have placed greater emphasis on the conduct of Mr C's personal loan when considering whether to withdraw banking facilities rather than the current account and mortgage. And, by closing Mr C's current account, first direct had effectively caused him to be in breach of the mortgage terms.

But, looked at overall, our adjudicator didn't think it likely that Mr and Mrs C would've lost out in money terms. It didn't look as if they'd have been able to offset much interest, given their money problems. So they weren't any worse off as a result of not being able to offset.

Our adjudicator did think though that closure of Mr C's account would've been inconvenient for him. He suggested that the bank should pay Mr C £200 in recognition of this and to cover the possibility Mr and Mrs C might've paid some additional interest to the mortgage.

Mr and Mrs C disagree this is a fair amount. They feel our adjudicator has *"failed to understand the seriousness and the implications of the illegal act committed by the bank."* And we haven't helped resolve the situation as Mr C still can't offset funds against his mortgage. He says the bank is in breach of contract – not him. And our adjudicator's assumptions about their money situation fail to take into account Mr and Mrs C's:

- significant pension pots
- significant inheritance funds
- additional properties (mortgage free) and not secured against any debt
- full time employment

This means they've got money to invest – and their plan was always to offset their mortgage.

The bank also disagrees with our adjudicator. It says it went above and beyond what it would normally offer in an attempt to assist Mr C. The bank followed its processes and procedures correctly. Mr C had lots of extra time to try to secure a new job and get himself back on track. The bank doesn't understand why our adjudicator feels that £200 will resolve the matter. If Mr C had asked to open a savings account to enable him to offset any money he'd come into against his mortgage it would've done this for him. It's still willing to open a savings account for him now – but this isn't something Mr C ever asked the bank to do.

So, as the complaint couldn't be settled by agreement between the parties, it was passed to me for a decision. I issued a provisional decision.

my provisional decision

I agreed with our adjudicator that the amount of compensation suggested seemed fair to settle this complaint. And first direct had confirmed that Mr C could ask the bank to open a

savings account – and this can be used to offset his mortgage account. So that appeared to me to go some way towards resolving his complaint.

But it wasn't clear to me whether Mr and Mrs C might've had some further information that could've affected my decision, so I asked them about this.

what the parties said

Our adjudicator has had further discussions with Mr and Mrs C. They say (in summary):

- it's positive news that first direct have now agreed that a savings account can be opened to allow offsetting to re-commence
- they also agree that the proposed settlement is fair based upon "The complaint that Mr C's banking facilities were withdrawn"
- they'll complain separately about another unresolved issue they're unhappy about
- as issues of legal liability like breach of contract must be decided in court, then the final decision should relate solely to "*The complaint that Mr C's banking facilities were withdrawn*" so they aren't precluded from taking legal action for breach of contract and associated legal liability.

Here's a brief summary of what the bank says:

- it gave Mr C two months' notice it'd close his account which was more than it was required to do. It was entitled to close the account so it isn't fair to award £200 compensation for this.
- if the bank had managed Mr C's account rigidly in line with its usual processes, he could've been in a much worse position
- when Mr C had money problems in 2010, he told first direct he'd used all his savings and was unemployed. So if the bank had left a savings account open it would've been no use to him.
- since his banking facilities were withdrawn, Mr C hasn't ever contacted the bank to discuss funds that he'd like to offset against his mortgage. Although first direct has confirmed it's happy to open a new savings account and allow Mr C to offset the funds, the bank is waiting for him to contact it about this
- the monthly repayment he was able to offer was below what the bank would normally accept, but as an exception in Mr C's case it agreed and continued to do so for two years
- if the bank hadn't moved Mr C's mortgage onto 'interest only' he probably wouldn't have been able to afford the monthly repayments. This would've meant the bank could've foreclosed the mortgage. However, first direct knew it'd be difficult, if not impossible, for him to secure another mortgage elsewhere, as he was unemployed
- if first direct hadn't allowed Mr C to move onto interest only, he may have been forced to sell his house. This would've been very disruptive for Mr C and his family

- customers who have an offset mortgage now no longer have to link another product to it.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account that first direct feels it has managed Mr C's accounts fairly and reasonably, and that it went above and beyond what it was required to do in an effort to assist Mr C and his family.

I agree the bank took steps to be helpful. We'd expect a lender always to treat fairly any customer who is having money problems and to look for constructive ways to assist. But I think first direct could've made it clearer sooner that it'd allow Mr C to have a savings account that could still be used to offset his mortgage. This could've helped settle this complaint earlier on and avoided some of the inconvenience and upset Mr and Mrs C have suffered as a result.

That said, the option to open a savings account and start offsetting has been open to Mr C for some time and he hasn't yet taken advantage of it.

So I can see no reason to depart from my provisional decision.

If Mr and Mrs C might want to take legal action against first direct then I'd recommend they seek legal advice on their position before deciding if they want to accept my decision. That way they can be sure accepting my decision won't affect any legal case they might want to bring. We can provide details of organisations which provide free legal advice if Mr and Mrs C would like us to.

I'd also just mention here that there are strict time limits for bringing a case in court and Mr and Mrs C may miss the deadline for doing this if they delay.

my final decision

I uphold this complaint and order HSBC Bank plc (trading as first direct) to do the following:

- open a savings account on application by Mr C (or for Mr C and Mrs C if they decide to apply jointly)
- to do this without delay so that the facility to offset is in place as soon as possible
- pay £200 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 21 November 2016.

Susan Webb
ombudsman