

complaint

This complaint is about two mortgages that Mr and Mrs H took out with HSBC UK Bank Plc; one to purchase their new home, the other to raise capital on a property they already owned as part of the deposit on their new home. They say that delays on the part of HSBC and its chosen solicitor prevented them from completing the purchase on time. Mr and Mrs H are seeking compensation for their financial losses and for the time, trouble and inconvenience caused to them.

background

The events leading up to, and arising out of, the complaint are complex. I've read everything, and have summarised events in rather less detail than has been presented, using my own words. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Mr and Mrs H were buying a new property; they were intending to finance it with a mortgage secured on the new property (which I'll call "B") and new borrowing raised by mortgaging a second property they already owned (which I'll call "C"). Both mortgage applications were submitted to HSBC. The application for B progressed without too much incident, and the offer was issued on 23 August 2018. The application on C was beset by problems, resulting in five separate offers being issued.

Mr and Mrs H had exchanged contracts on the purchase of B on 23 August 2018, with an intended completion date of 5 September 2018. They say they did this after their broker (who I'll call "K") said it had been assured by HSBC the deadline was achievable.

The problems with the mortgage of C meant that transaction didn't complete until October 2018; to mitigate this, Mr and Mrs H had made alternative short-term financial arrangements to ensure funds were available to complete the purchase of B on 5 September 2018.

Unfortunately, the conveyancing work necessary to allow the mortgage on B to complete only began on the afternoon of 5 September 2018. A query arose over the extent of the property title that was being charged to HSBC. Dealing with this meant that the work wasn't finished, and the funds released, until late on 6 September 2018, with completion taking place the next day.

This meant Mr and Mrs H and their family had to stay overnight in a hotel and put all of their belongings into storage. Even after they were finally able to access their new home, they had to sleep on the floor in the same clothes for two further nights, until their removal company could deliver their belongings.

Mr and Mrs H complained, submitting a claim for around £18,000, covering expenses incurred and loss of earnings for Mr H. HSBC accepted it had mis-handled the re-mortgage

application in respect of C and paid Mr and Mrs H £600 compensation for their time, trouble and upset.

But on the delay in completing the mortgage on B, HSBC rejected the complaint. It denied having guaranteed completion by 5 September 2018, said that its solicitors (whom I'll call "O") had done all they reasonably could to try and do so, but ultimately, there wasn't enough time. The real problem, in HSBC's view, was that Mr and Mrs H had exchanged contracts on 23 August 2018 without authority from O.

Our investigator broadly agreed with HSBC's position, and didn't recommend the complaint be upheld. Mr and Mrs H have asked for their complaint to be reviewed by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But I'll make some general observations before dealing with the substance of the complaint.

We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts. We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

Mr and Mrs H have repeatedly insisted we obtain copies of emails exchanged between HSBC and their broker K. Mr and Mrs H are K's client, and could therefore have instructed it to release the material. Mr and Mrs H have said HSBC barred K from doing so; I don't know if that's true or not (and to be clear, I don't consider that I need to), but if it is, it's a matter for Mr and Mrs H to raise with the Information Commissioner's Office if they wish to.

It's up to us to decide what evidence we need to decide a complaint, where we should get it from, and what weight we should attach to it once we have it. It's also our judgement to make on when we have everything we need to reach a fair conclusion. I'm satisfied I can do so here on the basis of what I already have, which, to be clear, includes copies HSBC has supplied of emails between itself and K, as well as its contact notes.

I'll deal with property C first; I don't have to decide if HSBC mis-handled the application. It's admitted making mistakes and has paid compensation. I don't need to "drill down" into the detail of the problems, merely the impact they had. In that context, all I need decide is if the compensation HSBC has paid is enough, or if more is warranted.

The problems with the re-mortgage of C had no impact directly on the completion of the purchase of B; if that had happened on time, Mr and Mrs H would still have had to make the alternative short-term funding arrangements to "plug the gap" left by the absence of the money being raised from the re-mortgage. Mr and Mrs H haven't provided any details of those loans, other than that they came from wealthy friends and family, and haven't included any costs of arranging them in their claim. That being the case, the assessment of redress in respect of the mortgage on C becomes solely about trouble and upset, and in that context, I find HSBC's payment of £600 to be fair in the circumstances. Had it not already been made, I wouldn't have awarded more.

I now deal with the mortgage on B itself. When you're as close to a situation as Mr and Mrs H have been here, it's natural and understandable to see things solely on one's own terms. It's also natural to emphasise individual statements or comments that appear to support a particular view point, whilst at the same time paying less attention to those that support the opposite viewpoint. But look hard enough and it's possible to find inconsistencies and/or anomalies in what both sides have said and done from time to time.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things subjectively, sometimes taking a step back from the fine detail and instead focussing on the broader picture. That's what I've done here. This was a mortgage application that began on 7 August 2018, resulted in an offer of advance on 23 August 2018, and completed on 7 September 2018. By any reasonable assessment, that wasn't an excessive period of time. It's only contentious because Mr and Mrs H had exchanged contracts on the day the offer was issued and in doing so, committed themselves to completing on 5 September 2018.

Nothing in the evidence from either side gives me any reason to believe HSBC guaranteed completion could take place by 5 September 2018. I don't believe any lender would do that; there are just too many variables that can prevent a transaction competing by a specified date, and I'd expect K to know that even if Mr and Mrs H did not.

I'll certainly accept the likelihood that when K asked if completion by 5 September 2018 was *achievable*, HSBC answered that it thought it was. But that wouldn't of itself mean HSBC was responsible if completion wasn't achieved by that date. The reality is that even if it might have been achievable at the outset, completion by 5 September 2018 became difficult and unlikely when O only received the contract pack on 31 August 2018, a Friday, and the mortgage deed on 4 September 2018; the day before completion was due.

Mr and Mrs H have said HSBC failed to impress on O the urgency, such that O only began work on the case after lunch on 5 September 2018. I've thought very hard about this, and think it's important to put some context in here. This transaction was obviously of paramount importance to Mr and Mrs H, but it was only one of several property transactions that O would have had "on desk" to deal with. Every one of those transactions would have been just as important to the people involved in them as the purchase of B was to Mr and Mrs H.

In that scenario, it's only fair and reasonable that O should deal with cases in date order. I'd expect it to resist any attempt to force it to do otherwise, whether that came from HSBC as its instructing lender, or from Mr and Mrs H who, to be clear, were not O's clients.

In essence, this aspect of the complaint boils down to Mr and Mrs H wanting to "jump the queue" over other people whose transactions were equally important to them, and expecting HSBC and/or O to help them do so. That's neither fair nor reasonable, especially when it's very likely that O will have been instructed in some or all of those other transactions by lenders other than HSBC.

All of that aside, Mr and Mrs H argue that it should still have been possible to complete on time if there hadn't been confusion over the title plan, and how much of the property was to be included in the charge. As the parties making the assertion, it's for Mr and Mrs H to prove it, and overall I don't think they've done so. I accept it's possible that could have happened, but for me to find in their favour on that point, possible isn't enough.

I have to be satisfied on the balance of probabilities that but for the time taken to clarify the extent of the security, it's *more* likely than not (even as likely isn't enough) that O would have

been in a position to submit a certificate of title, receive the mortgage funds and complete the purchase of B early enough on 5 September 2018 to allow Mr and Mrs H to move themselves and their belongings into B. Based on everything that's been said and provided, I don't find that be more likely than not. I'm not even convinced it's as likely, which means I can't safely find in Mr and Mrs H's favour, however much they'd like me to.

In summary, HSBC did make some mistakes, but they weren't the reason the completion deadline was missed. And I don't believe that anything that passed between HSBC and K was what prompted Mr and Mrs H to exchange contracts on the day they received the mortgage offer and commit to completing on 5 September 2018. By their own testimony, Mr and Mrs H's vendor would only sell B to them if they did that; so I think that was the dominant driver of their decision.

I don't mean this unkindly, but I think Mr and Mrs H have to accept that they took a gamble to ensure they secured the property they wanted. That gamble paid off, but the price of it was some additional unexpected expense and a considerable measure of inconvenience to them and their family.

Mr and Mrs H don't have to accept my final decision, and if they don't, neither they nor HSBC will be bound by it. Subject to any time limits or other restrictions a court might impose, Mr and Mrs H's right to take legal action against HSBC in respect of the matters covered in this complaint won't have been prejudiced by our consideration of it.

my final decision

For the reasons set out above and below, my final decision is that I don't uphold this complaint or make any order or award against HSBC UK Bank Plc. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 25 March 2020.

Jeff Parrington
ombudsman