

### **complaint**

Mr and Mrs N complain about HSBC Bank Plc's (trading as 'first direct') refusal to agree to two requests for a second charge on their property.

### **our initial conclusions**

The adjudicator did not recommend that the complaint be upheld, because first direct was entitled to refuse its consent to the registration of a second charge (after its first charge on the offset mortgage and offset loan).

### **my final decision**

To decide what is fair and reasonable in this complaint, I have considered everything Mr and Mrs N and first direct have provided. I have taken careful note of the further representations made by Mr N since the adjudicator's letter.

I regret that I do not uphold this complaint because first direct's refusal to allow a second charge from another lender was in accordance with:

(a) its mortgage deed conditions (2006 edition) – 9(d): no other mortgage or charge without the bank's written consent; and

(b) its offset mortgage terms and conditions - 1(b): the mortgage will be the first and only charge unless otherwise agreed.

I do not consider that its consent was unreasonably withheld in breach of condition 39 (a) and (b), because it was entitled to take any step which it considered protected its security.

Nor do I consider that its decision to advance further funds in August 2007 was unreasonable in the light of :

- 1) its assessment of Mr and Mrs N's income, affordability and loan to value; and
- 2) those funds being partly used to pay off the existing loan from the other lender.

**Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs N either to accept or reject my decision, in writing, before 11 June 2013.**

signed:

date: **8 May 2013**

*Charles Sweet*  
*ombudsman at the Financial Ombudsman Services*

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

#### **ombudsman notes**

1. I have been informed that Mr and Mrs N may wish to commence legal proceedings against first direct before limitation expires in May 2013.
2. Mr and Mrs N sold their property for £575,000 and paid off the outstanding mortgages in November 2012.
3. It was previously thought that another lender had registered a charge against its August 2006 loan on the property. It had previously sought consent for a second charge from first direct – which was refused in August 2006.
4. In fact the other lender unilaterally registered an Agreed Notice (not a second charge) at the Land Registry.
5. Mr and Mrs N were not in breach of their mortgage contract by this registration.
6. Mr and Mrs N have conducted successful legal proceedings against the other lender for acting in breach of the refusal from first direct.

#### **what is a final decision?**

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

#### **what happens next?**

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.