

complaint

Mr S and Miss C complain that HSBC Bank plc failed to give correct advice about the mortgage products they were entitled to.

background

Mr S and Miss C have a mortgage with HSBC. On 2 August 2014 HSBC wrote reminding them that their fixed rate product was due to end on 31 October 2014, after which the mortgage would go to the standard variable rate (SVR). The letter said their loan-to-value ratio (LTV) was 81%.

They decided to apply for a new fixed rate. They owned 15-20% of the equity so wanted a rate which would be available with an LTV of 80-85%. HSBC provided them with a list of its current mortgage products. They decided to opt for a rate of 2.89% which was available with 80% LTV. They complain that HSBC also had a product which was available with 85% LTV, but it wasn't on the list.

On 8 November 2014 they had a phone discussion with an HSBC adviser. She offered a rate of about 4% at 90% LTV. This rate was higher than the SVR, but the adviser said it was the only option. Mr S explained that HSBC's letter said that the current value of their property was estimated at £81,065 according to the Halifax House Price Index. The adviser said this estimation had gone down to £79,024, which produced an LTV of 82.44%. She said they would not be allowed to overpay to bring the LTV down to 80% and didn't mention the product at 85% LTV although it was available at the time.

The adviser said that if Mr S and Miss C were unhappy with the new price estimate a Land Registry Search could be performed. This was done and the figure was about £69,000, producing an LTV of some 94%.

Mr S and Miss C complained to HSBC which replied that it had to rely upon the figure of £69,000 provided. If this were not acceptable then a professional valuation could be obtained and HSBC would reimburse the cost of the valuation if it provided a figure above £69,000.

Mr S and Miss C complained to this service. They said HSBC was saying that because the Land Registry search valued the property at about £69,000, it was irrelevant that they were eligible for products at lower than 90% LTV before and during the phone discussion.

They believe HSBC's point is invalid because the debate about what the property was worth (Land Registry Search versus Halifax Index Price) would never have arisen if HSBC had offered them all of the products that they were eligible for in the first place. HSBC had a duty to advise its customers of products that they were entitled to. If it had done that, they would have simply chosen the 85% LTV rate with no need for a discussion with an adviser or a Land Registry Search.

They said HSBC had not understood their complaint. They were eligible for an 85% LTV rate before and during the discussion, but HSBC never brought this to their attention in any of the documentation sent to them, or during the phone call itself. If they'd known this product existed, they could have just opted for it online. Additionally, as they didn't know it existed, they were quite prepared to make the necessary overpayment to qualify for an 80% LTV

rate, but this point just seemed to be ignored even though they'd been told on several occasions that they could do this.

To resolve their complaint they would like HSBC to (a) put them on the 85% LTV rate (about 2.89%) which it was offering at the time of the phone discussion but which did not appear on the product list that it sent them; (b) refund the difference, plus interest, between then and now, as they should have been on this rate; and (c) pay compensation for not treating them fairly by offering the rate that they were eligible for.

HSBC did not believe it had made an error. It said both estimated values (£81,065 and £69,000) meant that Mr S and Miss C would not benefit from a different rate. Both estimated values kept them in the highest LTV rate so the actual value was largely academic. It had offered to undertake a valuation and in the event that it returned a value above £69,000 HSBC would pay for it.

Our adjudicator didn't recommend that the complaint be upheld. She understood Mr S and Miss C's disappointment that they would have been able to avail themselves of the lower rate had they processed the application online. It was unfortunate that the property had reduced in value and this meant that they did not qualify for the rate they wanted, but HSBC was entitled to rely on the current value when offering its mortgage products. She felt HSBC's offer was reasonable in the circumstances.

Mr S and Miss C disagreed. Their complaint did not relate to the value put on the property. It related to the fact that they were eligible for an 85% LTV rate before and during the telephone discussion and were never offered this product. They understood that property values could rise and fall and they understood what their property was now worth. But the fact remained that HSBC had a product which they were eligible for and didn't tell them.

The adjudicator said her understanding was that there were rates at 80% LTV or lower, or 90% LTV. Mr S and Miss C had said they were eligible for a product at 85% LTV, but had not supplied any evidence that HSBC offered such a product. She would be happy to consider this point further if they did have evidence.

Following a conversation with Mr S, the adjudicator asked HSBC to confirm whether it had had an 85% LTV product at the time, and if so why it had not been included in the information sent. HSBC replied that at the time it only had 85% LTV rates for new purchases. Mr S and Miss C did not qualify for these rates so were not offered them.

Mr S and Miss C then produced two letters from HSBC dated 24 and 28 July 2015 which said:

"I can confirm that we began to offer an 85% Loan to Value (LTV) rate from late 2013, although these rates were only available to house purchase applications. In October 2014 we released an 85% LTV mortgage deal that was open to all of our customers subject to successful application."

....

"Further to our conversation, please find below details of the mortgage rates as requested."

The following deals had a booking fee of £999.00, with a valuation fee and a completion fee; 2 year fixed at 2.99%, 5 year fixed at 3.99% and a Tracker (Bank of England base rate (0.5%) + 2.79%) at 3.29%.

The following deals had no booking fee, valuation fee or completion fee, 2 year fixed at 3.29% and a 5 year fixed at 4.29%.

The above were open to all of our existing customers between 20 October and 30 November 2014, subject to successful application."

The adjudicator put this to HSBC saying:

"Mr S has sent the attached letter that shows they were eligible for this mortgage product during the call with [adviser] in November 2014. I feel that it is more than likely that they would have opted for this product had [adviser] made them aware of it during the call rather than have their property revalued that meant they were ineligible for any mortgage product."

HSBC replied:

"I do not think that the customer would have chosen the 85% rate. He was quite adamant that he felt that he should have been able to get the 80% rate and the conversation and subsequent actions were focused on this. I firmly believe that if we had offered the 85% rate, he would still have gone down the route that was followed. Clearly, however, we'll never know this.

I think it's worth pointing out that the customer was in receipt of a letter that indicated his LTV was 81%. He then approached us with a request to apply specifically for an 80% rate (having identified the rate himself). Whilst we can't be certain, I'd expect he must have been aware of the 85% rates before contacting us. As it was execution only, the Mortgage Advisor would not (and did not) discuss any rates."

In a phone conversation between Mr S and the adjudicator it was agreed the matter be referred to an ombudsman for decision.

my findings

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

Mr S and Miss C ask two questions which encapsulate their complaint:

- Why was the 85% LTV rate omitted from the information they were given?
- Why was their request to make an overpayment, so that they could go onto the 80% LTV rate, refused by the adviser?

In reply to the first question HSBC initially said that at the time it only had 85% LTV rates for new purchases. Mr S and Miss C did not qualify for these rates so were not offered them. Confronted by evidence from Mr S and Miss C that the rates were open to all existing customers, HSBC changed its position and said (a) that it did not think that Mr S and Miss C

would have chosen the 85% rate if it had been offered; and (b) that it expected they must have been aware of the 85% rate before contacting HSBC.

I don't agree. Like the adjudicator, I accept Mr S and Miss C's evidence that if they had been told about the 85% LTV rate, they would have applied online and would not have needed the discussion because the HSBC letter said they already had 81%. It is likely that as soon as they applied, they would have found out that they only had 82.44% because of the change in the Halifax House Price Index, but they could still have gone ahead.

I have listened to the recording of the discussion and the answer to the second question is that the conversation just didn't go that way. The reason why the electronic valuation with Land Registry checks was carried out was that the Halifax House Price Index had fallen from £81,065 to £79,024, giving an LTV of 82.44%, instead of the 81% which Mr S and Miss C had hoped to reduce to 80% with an overpayment. The adviser was sympathetic and offered to carry out the valuation but warned them that whatever it came out at, that was the one they'd need to go ahead with. Mr S agreed to the valuation.

As soon as the £69,000 figure came out, the 90% LTV was indeed the only option. Mr S was plainly distressed that the electronic valuation had been done, and asked why the adviser hadn't advised against doing it, but it isn't fair to blame that on the adviser. She had no reason to expect it would come out so low. Mr S accepted that on the basis of that valuation, the overpayment which would be necessary to get the 80% LTV was too high.

The adviser offered to arrange a professional valuation at a cost of £125 but this was declined. HSBC has also offered to arrange a valuation and in the event that it returned a value above £69,000 HSBC would pay for it, but this has been declined too.

I will add one point for completeness. I know from their email exchange with the adjudicator on 31 July 2015 that Mr S and Miss C accept this point, and that the complaint is that they weren't told about the 85% rate before the discussion. The point is that there is no question of the adviser having a duty to tell Mr S and Miss C about the 85% rate. The discussion started off as an advised call, with the adviser saying HSBC had a range of products, but was expressly changed to execution-only when it became clear Mr S and Miss C had already chosen the product they wanted, namely the 80% LTV rate at 2.79%. The adviser said she could change the call over to being without the advice service, and Mr S replied: "we don't think we need any advice".

The next question is what follows from my finding that Mr S and Miss C would have chosen the 85% rate if it had been offered. They say HSBC had a duty to advise its customers of products that they were entitled to. If it had done that, they would have simply chosen the 85% LTV rate with no need for a discussion with an adviser or an electronic valuation.

But I don't agree that HSBC had any such duty. A mortgage lender is not obliged to offer fixed rate products. If it does offer them, it doesn't owe a duty to all its customers to ensure that they know about them. It may advertise the products because it wants to sell them, but it doesn't assume a duty to inform every customer who might benefit.

But Mr S and Miss C weren't just random customers. Their existing product was about to expire and HSBC was expressly writing to them about this. Didn't HSBC assume a duty by sending Mr S and Miss C a list of available products?

At this point I had to ask the adjudicator to make further enquiries of both parties, because it wasn't obvious from the papers that the list referred to by Mr S and Miss C was expressly sent to them with HSBC's letter of 2 August 2014. It could have been picked up at a branch or printed from the website, neither of which would create any duty. The letter itself did not say that a list was enclosed, but I only had the first page of the letter, and this could have been on the second page.

Mr S and Miss C replied sending further copies of the list of products and of the first page of the HSBC letter. They referred me to the second paragraph of their complaint, but this did not say that the list had been enclosed with that letter, only that it had been provided by HSBC, which was equally consistent with the other possibilities.

HSBC replied sending a complete copy of the 2 August letter. The second page commences:

"The enclosed 'Existing Customer Mortgage Interest Rates' sets out all of the deals currently available to you. Our deals change from time to time and we'll be happy to provide you with the details of new offers at any time. However, you can apply for one of the deals in the enclosed leaflet within 14 days of the date of this letter."

This confirms that the list was enclosed with the letter, and indeed that it included all the deals then available to Mr S and Miss C.

On the question why the 85% LTV deal had been omitted from the list, HSBC said that deal had only been available for a six week period, and was therefore not included in the rates sent. It appended a copy of the 85% rates it had sent to the adjudicator (as appended to the adjudicator's assessment dated 17 July 2015) showing that the period was 21 July 2014 to 31 August 2014. It follows from this that the 85% rate was available on 2 August 2014.

HSBC has put forward two explanations for omitting the 85% rate from the 2 August letter, firstly that it was only available for six weeks, and secondly that it was only available for new purchases.

In relation to the first explanation, it's clear that the six week period included 2 August, so I can't accept that explanation. The second explanation, on the face of it, doesn't stack up either because of HSBC's letters of 24 and 28 July 2015 referred to above. However on closer examination it's evident that the 85% LTV deal was initially only available for new purchases, and wasn't made available to all customers until October 2014. It was therefore not available to Mr S and Miss C when HSBC sent the product list on 2 August 2014. It was of course available at the time of the phone discussion, but I've dealt with that issue above.

In these circumstances I agree with the adjudicator that this complaint shouldn't be upheld.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Miss C to accept or reject my decision before 9 November 2015.

Edward Callaghan

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