

## **complaint**

Mr A complains that HSBC Bank Plc set up a loan in his name without his permission or agreement. He complains that it wouldn't allow him to cancel the loan within the cooling-off period and it has recorded adverse information on his credit file.

## **background**

Mr A and his ex-wife had a mortgage through HSBC. The mortgage was on a fixed rate for a period of time and early repayment charges (ERC) were applicable. Mr A and his ex-wife went through divorce proceedings and his ex-wife was to be released from the mortgage. During that process Mr A and his ex-wife were made aware of the ERC on several occasions. However, on one occasion HSBC confirmed to the conveyancing solicitor that an ERC didn't apply.

This meant when the mortgage came to be discharged, an amount was left outstanding in respect of the ERC. Mr A and his ex-wife were unhappy with that and asked for the charge to be waived. After an investigation into the complaint by this office, and following the investigators request to add the ERC to Mr A's new mortgage, HSBC agreed to set up an interest free loan for the ERC, pay them £400 for the distress and inconvenience caused, close the original mortgage, release Mr A's ex-wife from the title and remove any adverse credit information in relation to the repayment of the mortgage.

Mr A didn't agree to that and so the matter was referred to one of my ombudsman colleagues for a final decision. The ombudsman decided HSBC was fairly entitled to charge the ERC and the offer made by it was a fair and reasonable resolution to the complaint. Mr A didn't accept that decision.

During the time that complaint was being investigated and subsequently referred to an ombudsman, HSBC set up the interest free loan. It sent the loan agreement to Mr A, who signed it on 3 July 2017. On 7 July Mr A tells HSBC he is unhappy with the loan agreement and he only signed it as time was running out and didn't want to cause further issues. He wanted to close the loan as he didn't agree to it. He subsequently complained the loan hadn't been agreed to and he'd understood the ERC amount would be added to his new mortgage. But HSBC didn't reply to that complaint.

Mr A contacted us after not accepting the final decision on his other complaint. We let HSBC know about his new complaint and it issued a final response explaining Mr A still owed it the ERC. It said he hadn't come up with any repayment proposals but that it would remove adverse information recorded between October and February with a note to remove March's as well if things were not settled by then.

Our investigator explained he wouldn't be revisiting any of the matters considered by the ombudsman. He concluded HSBC wasn't being unfair when it didn't agree for the loan to be cancelled within the cooling off period as Mr A hadn't paid the amount outstanding. He also concluded HSBC hadn't been recording adverse information in relation to the loan until after the final decision on his other complaint hadn't been accepted.

Mr A hasn't accepted the outcome. He's provided evidence of HSBC recording adverse information and remains of the view he didn't agree to the loan agreement and so he should've been able to cancel 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. Having done so, I don't uphold it. I explain why below.

My role is to reach a fair and reasonable decision on the complaint before me. I will not be revisiting any of those matters that were decided by my ombudsman colleague regarding the ERC or the loan agreement. However, out of necessity I may have to refer to events that occurred in order to give my reasons for this decision.

I'm satisfied Mr A was aware that a loan agreement was being set up for the ERC. The investigator told him this during a telephone conversation on his other complaint. So although Mr A might have originally understood the ERC was going to be added as a further advance on his new mortgage, he knew that wasn't the offer HSBC was making and that we thought the interest free loan was fair and reasonable. Mr A signed the loan agreement on 3 July 2017. This was a legally binding agreement; if Mr A didn't want to be bound by it he shouldn't have signed it. By signing the agreement I'm satisfied he was giving his permission for the loan to go ahead.

Loan agreements, particularly those regulated by the Consumer Credit Act 1974, generally have a cooling off period. However, in order to cancel an agreement the amount lent would need to be repaid. HSBC was effectively lending Mr A the ERC amount, as it was an amount he owed it but couldn't repay when required. I haven't seen any evidence Mr A offered or did repay the balance owed. In the circumstances, I don't find there was any obligation on HSBC to agree to the cancellation of the loan agreement, either within the cooling off period or subsequently.

Mr A also complains HSBC has recorded adverse data on his credit file. I understand in response to the complaint HSBC has agreed to clear any adverse information recorded on the loan between October 2017 and March 2018. Lenders are required to record accurate information on credit files. It seems to me that as Mr A wasn't making loan repayments, nor had made any steps to repay the ERC, he was in arrears and so I wouldn't have asked HSBC to amend the information on his credit file had it not already done so.

I do understand Mr A is unhappy with this situation. But I don't find HSBC has done anything wrong in seeking repayment from Mr A under the loan agreement.

## **my final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 September 2018.

Claire Hopkins  
**ombudsman**