

The complaint

Ms P and Mr P's complaint about HSBC UK Bank Plc (HSBC) relates to the instructions they received from HSBC regarding when their mortgage booking fee had to be paid.

What happened

In September 2022 HSBC wrote to Ms P and Mr P advising that their existing fixed rate mortgage was due to expire on 31 December 2022.

On 12 September Ms P and Mr P made an online application to switch their mortgage rate, via HSBC's mortgage hub. HSBC issued a mortgage offer to them that day, in respect of a mortgage set to run from 1 January 2023, with an interest rate of 3.46% fixed for 5 years. The booking fee was £999.

It was a term of the offer that it be accepted by 25 September, which Ms P and Mr P did.

HSBC also say that it was a term of the offer that the booking fee was be paid by the same date, and as Ms P and Mr P didn't do so, the offer expired.

Ms P and Mr P say that it wasn't clear that both the offer and the booking fee had to be paid by the 25 September. They argue that HSBC's documentation should be interpreted that the booking fee only needed to be paid before the actual rate switch took place, that being 1 January 2023.

HSBC don't accept that argument and say it is clear when the booking fee had to be paid by. As such they have rejected Ms P and Mr P's complaint. Ms P and Mr P were unhappy with HSBC's final response and so approached this service to see if we could assist in resolving the dispute.

Our investigator thought that HSBC had not done anything wrong and had dealt with the complaint fairly. Ms P and Mr P didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

What I've decided – and why

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

My summary of what happened is brief and I know the parties went into a lot more detail. I am going to focus on what I think are the key issues. Our rules allow me to do this, and it reflects the nature of our service as an informal alternative to the courts. So, if there is something I've not mentioned, it isn't because I've ignored it, it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I have taken account of both sides' views and I've looked at the issues raised and considered all the available evidence.

The issue in this complaint is about whether Ms P and Mr P have complied with the terms of the mortgage offer. The issue is whether they should they have paid the booking fee by the 25 September, which Ms P and Mr P accept they did not, or was it open to them to pay it before the rate switch came into effect on 1 January 2023.

The relevant key documentation is the Mortgage Offer and accompanying communications. Ms P and Mr P accept that on 12 September they received these documents. On page two of the mortgage offer, in bold print, it provides the following statement,

Unless we agree otherwise, you may accept this Offer until the validity date shown in the Mortgage Illustration.

In a communication dated 13 September, which was sent to them both, via their online banking, HSBC said,

Once logged in, you'll be able to open the application and read and accept the offer. You'll then need to pay any fees (if applicable) before we change the rate.

The message goes on to state,

You need to accept your rate switch offer by 25 September 2022. If you have not accepted your offer by this date, your request to switch your rate will expire and you will need to re-apply.

At section three of the mortgage offer, under the heading 'Costs to be paid on a one-off basis:' it states,

£999.00 is payable to HSBC upon acceptance of this mortgage Rate Switching Offer.

I have noted that HSBC's advisor explained to Ms P and Mr P that the booking fee could be paid upfront or added to the mortgage, but that he gave no advice about the deadline for paying the booking fee.

On 22 September HSBC sent by way of secure message a reminder to Ms P and Mr P that they must accept their offer by the 25 September.

I understand Ms P and Mr P's argument, but I am afraid I do not agree with it. They interpret the documentation as allowing them to pay the booking fee up to the date of the rate switch on the 1 January. There is nothing in any of the documentation, nor in the phone recording which expressly states this to be the position. What Ms P and Mr P attempt to do is to draw an inference that this is so from the documentation. In my view the documentation is however clear and does not provide for this interpretation.

It expressly states at section three of the offer that the booking fee is to be paid upon acceptance of the offer. It is a basic tenet of contract law that for a contract to become binding, there must be an acceptance of the offer. An offer can only be accepted at a particular fixed point in time.

Here it was when both Ms P and Mr P had both accepted HSBC's offer. Mr P accepted first, and Ms P accepted on the 21 September. So, it is 21 September when the contract is formed and becomes binding. It is at this point, in accordance with section 3 of the offer, that the booking fee becomes payable because that is when the offer was accepted on 21 September.

The wording at section three leaves no room for misinterpretation in my view. If Ms P and Mr P's argument that the booking fee could have been paid at or by a different point in time were correct, then the offer document would have provided for that, but it did not.

As the booking fee was not paid upon acceptance, then also in accordance with the offer, the offer then expired.

So, although Ms P and Mr P will probably be disappointed with my decision, I can't say HSBC has acted unfairly or unreasonably here and I'm not upholding this complaint.

My final decision

My final decision is I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P and Mr P to accept or reject my decision before 19 February 2024.

Jonathan Willis
Ombudsman