

The complaint

A company which I'll refer to as 'M' complains that HSBC UK Bank Plc treated them unfairly when it didn't make them aware that their mortgage product had come to an end.

The complaint is brought on M's behalf by their company secretary Mr A.

What happened

M held a commercial loan with HSBC which they took out in December 2017.

M told us:

- They had a fixed rate product which they believed ended in December 2022, However, when they went to change to a new product, they noticed it actually ended in December 2021.
- Their Relationship Manager ('RM') would previously contact them ahead of their fixed rate ending, but this hadn't happened this time.
- They had received a confirmation email from their RM saying that their rate ended in December 2022.
- This error by the bank had meant they'd been paying more money each month since the rate had expired, and the fixed rates offered by the bank in December 2022 were higher than they were in December 2021. So, they'd incurred a financial loss of around £350 per month since Jan 2022, which was unfair.
- When they'd complained to the bank, HSBC had admitted there had been an error on its part, but there were no comparable rates available for what would have been offered prior to December 2021 when they should have renewed their rate.
- During this period, they had been given several new RM's and the current one wouldn't provide them with any mortgage terms in writing and would only do this on a verbal basis.
- They wanted HSBC to provide them with a comparable two-year fixed rate which would have been available prior to their rate expiring in December 2021, for the interest to be recalculated on this basis and compensation for the inconvenience caused.

HSBC told us:

- It accepted that it hadn't contacted M before their fixed rate had expired, or corrected M when they'd incorrectly said that it expired in December 2022 rather than December 2021.

- M had been provided with the correct expiry date when they'd taken out a two-year fixed rate in 2019 and this had been detailed in the facility letter, they'd accepted.
- It had written to M in April 2022, several times in May 2022, and each time its variable rate had changed after that. However, M hadn't raised concerns about not being on a fixed rate until September 2022.
- It couldn't change the interest rate previously applied to M's loan and backdate this to November 2021 as the partners had requested. However, M's current RM had offered the partners the current fixed rates available, and they'd chosen to stay on the variable rate instead.
- It had apologised for the inconvenience caused and paid M £300 compensation.

Our investigator didn't recommend the complaint be upheld. He said that HSBC had acknowledged it could have done more to contact M, however he thought the £300 compensation it had paid was enough to put things right. He thought that M ought reasonably to have been aware that their rate was expiring as they'd received a facility letter confirming the term of the fixed rate, and letters after the expiry saying their payments were changing.

M didn't agree. They said our investigator hadn't considered the misleading information they'd been given by the RM that their rate expired in December 2022. They also didn't feel the compensation offered by HSBC was enough to put things right, so they asked for an ombudsman to review their complaint.

I issued a provisional decision on 1 February 2024. I said the following:

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

Firstly, I need to decide exactly what M's complaint is, and what I can consider. I think there are two separate complaints here:

- The actions of the RM in September/October 2022 when M wanted to discuss the current fixed rates available.
- HSBC's actions when M's fixed rate expired in December 2021.

The actions of the RM in September/October 2022

M also told us that they are unhappy with the lack of service from HSBC when they wanted information about the current rates available and making over payments to their loan. However, this complaint was brought directly to this service and has now been passed to the bank to respond. If M remains unhappy after HSBC has reviewed their complaint, they can bring it to our service, and it will be addressed as a new complaint.

HSBC's actions when M's fixed rate expired in December 2021

M says that HSBC treated them unfairly because they weren't aware that their rate had come to an end, as the bank didn't contact them as it had done previously. HSBC has accepted that it caused M inconvenience by not contacting the partners

and offered £300 compensation. But I don't think that's enough to put things right. I'll explain why.

HSBC say that M didn't contact it to discuss taking out a new fixed rate, despite being aware of when their current rate expired – and I think this is reasonable. The onus here is with M as the borrower to ensure that they manage their loan accordingly. I've seen a copy of the facility letter of 3 December 2019 which says that the new rate would be fixed for 24 months, which was accepted by M. And given that M had previously taken out consecutive two-year fixed rates from the inception of the loan in December 2017, I think they ought reasonably to have been aware that their current two-year fixed rate was due to expire in December 2021.

However, M says that they initially didn't realise that their rate had come to an end because they normally received contact from their RM before their rate expired to discuss what new options were available. HSBC has told me that its process for notifying customers of their rates coming to an end is for the RM to contact them directly, and because of this, it doesn't send any reminder correspondence to its customers by any other means. I can see that didn't happen here, despite M's RM at the time receiving reminders from HSBC's central team in October 2021.

I've also seen that in January 2022, when M asked about making overpayments to their loan, they received a response from their RM saying, "once the loan returns to the variable rate in December you can make unlimited overpayments". So, I think once M had this confirmation in writing from HSBC it was reasonable for them, at least initially, to think that their fixed rate was still in place.

So, I've thought about when M reasonably would have been aware that their fixed rate had expired. HSBC told us that due to the repayments M was already making on their loan, any interest rate changes didn't affect them until the rise in March 2022. This meant the letter M received in April 2022 would have been the first time the partners would have been notified that their rate wasn't fixed – but I can't see that M took any action. I recognise that M may not have identified this or thought this was a mistake. However, I've seen copies of the letters sent to M in May 2022 saying that their regular payment had decreased by nearly £100. And after M received the second letter from HSBC dated 4 May 2022 saying that both their rate and payment had changed, I think they ought reasonably to have questioned this with HSBC.

At this point, I'm satisfied that M would have been aware that there would be no reason for their payments to change if they believed they were still in a fixed rate. I've seen that the letters also said that M's variable rate loan was linked to the Bank of England base rate which means the interest paid will change as the base rate changes. Instead, M didn't raise this with the HSBC for a further five months after more interest rate changes and associated letters.

HSBC told us that when M contacted it about their expired fixed rate, it offered the partners the current fixed rates available. However, M declined these options and chose to remain on the variable rate and make overpayments to their mortgage instead. M says that these new rates were significantly higher which is why they didn't accept a new fixed rate, and therefore the bank should offer them the rates available in November 2021. But I don't think that's fair.

Given that there's some confusion here about when M ought reasonably to have been aware of their fixed rate expiring, and the responsibility of each party in causing the error, I've thought about the fairest way to put things right. Firstly, based on the evidence available I'm satisfied on the balance of probability, that if it hadn't been for

the initial error taking place, M would have taken out a new fixed rate with HSBC when their rate expired. Given that M had historically always taken out a two-year fixed rate with the bank, I think it's likely that the partners would have chosen to do so again.

As I've explained above, I don't think M was reasonably aware that their fixed rate had expired on 3 December 2021 until they received the letter dated 4 May 2022 - when they would have received the second interest rate change notification. Therefore, I think HSBC is responsible for any changes to the rate during this time. However, I also think that M was reasonably aware from mid-May 2022, that their fixed rate had expired and should have contacted the bank at this point. Instead, they waited until September 2022 – four months later. So, I don't think HSBC should bear the responsibility for the rate increases during this period.

Putting things right

Overall, there's roughly a nine-month period between when M should have been contacted by HSBC to discuss a rate change which I think would likely have taken effect, and when M actually contacted the bank to query why their rate wasn't fixed as expected. I think the fairest way to put things right would be for HSBC to compensate M for its losses from not having the fixed rate, but I also think that the compensation should be adjusted to take into account the proportion of the losses for which HSBC should reasonably be held responsible. Given the variety of factors involved, it's not possible to derive an exact figure for this proportion, but in my view, it would be fair to require the bank to pay two-thirds of the loss.

HSBC is reluctant to reconstruct the loan with backdated interest rates, presumably because of the administrative difficulties involved, I've also seen that M made an overpayment to the loan due to their rate not being fixed and therefore the outstanding balance has reduced. I also note that a two-year fixed rate starting in December 2021 would already have come to an end by now. Therefore, I think the fairest and simplest way for HSBC to put things right would be for the bank to pay compensation to M as follows:

- HSBC should calculate (a) the sum of the monthly payments that would have been due from 4 December 2021 to 3 December 2023 for a two-year fixed rate loan, using throughout the interest rate that would have been available for a fixed rate loan commencing on 4 December 2021.
- HSBC should calculate (b), being the difference between (a) and the sum of the monthly payments actually made on the loan (excluding the overpayment made).
- HSBC should pay M two-thirds of (b).
- Interest should be added at 8% simple per annum to the reimbursed payments from the date the costs arose to the date of settlement.

It's also clear that HSBC's actions have caused M inconvenience, so I think the bank should also honour the £300 compensation offered.

I invited M and HSBC to give me any more evidence and information they wanted me to consider before issuing my final decision. Neither HSBC or M said whether they agreed or disagreed with the provisional decision, nor did they provide any further information.

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.

Having done so, as neither party responded with any further information, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I instruct HSBC UK Bank Plc to pay compensation to M as follows:

- HSBC should calculate (a) the sum of the monthly payments that would have been due from 4 December 2021 to 3 December 2023 for a two-year fixed rate loan, using throughout the interest rate that would have been available for a fixed rate loan commencing on 4 December 2021.
- HSBC should calculate (b), being the difference between (a) and the sum of the monthly payments actually made on the loan (excluding the overpayment made).
- HSBC should pay M two-thirds of (b).
- Interest should be added at 8% simple per annum to the reimbursed payments from the date the costs arose to the date of settlement.
- Pay M £300 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 22 March 2024.

Jenny Lomax
Ombudsman