

The complaint

This complaint's about a mortgage that Ms Y hold with HSBC UK Bank Plc. Ms Y says HSBC failed to make explicitly clear a policy change that would have allowed her to apply for a new interest rate product earlier than she had been previously led to believe. This meant that when she did apply, interest rates had increased which Ms Y says has left her out of pocket.

What happened

By way of a provisional decision dated 18 September 2023, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The broad circumstances of this complaint are known to Ms Y and HSBC. Our decisions are published, and it's important that I don't include any information here that might result in Ms Y being identified. Instead I'll give a brief summary of the key events, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Ms Y's mortgage was on a fixed rate that was due to expire on 31 December 2022. Early in August 2022, mindful of the upward trend in interest rates, Ms Y called HSBC and was told it allowed people to book a new rate in the 90 days before expiry. On that basis, she worked on the premise that she could apply from 3 October 2022.

On 24 August 2022, HSBC changed its policy, widening the "window" from 90 to 120 days; it updated its website immediately, and then in September began writing to people telling them about new deals currently available and how to apply for them. Ms Y was sent such a letter on 6 September 2022; however, the letter didn't expressly say the booking window had widened to 120 days. Ms Y interpreted the letter as a general circular that simply told her what rates were currently available, but not as telling her she was now eligible to apply for one.

By the time Ms Y found out she would have been eligible to apply for a new rate in early September 2022, during a phone conversation on 21 September 2022, rates had gone up. Ms Y took out a new five-year rate, to run from 1 January 2023, but then complained that HSBC hadn't done enough to make clear that it had changed its eligibility criteria. HSBC rejected the complaint, and when Ms Y referred it to us, our investigator didn't recommend it be upheld. He said HSBC hadn't treated Ms Y any differently from other customers in the same situation. Ms Y asked for the complaint to be referred to an ombudsman.

What I've provisionally found - 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, I've reached a different conclusion from the investigator's. I'm using this provisional decision to let the parties know how I am presently intending to determine the complaint, so they have the opportunity to comment before I do so.

This is a case where both sides of the argument has merit. On the one hand, HSBC has given Ms Y correct information when she has asked for it, and then made the new information available on its website when it changed policy. On the other hand, I take Ms Y's point that finding the updated information on the bank's website is no easy task, and in any event, one would need a reason to go looking for it in the first place. Overall, then, the website update isn't enough on its own, and isn't what this case turns on.

HSBC should reasonably have understood that, in a climate of rising interest rates, at any given time, many of its customers were asking about access to rates, anxious to protect themselves against increasing costs if they could. Those customers needed to know, expressly, that HSBC had changed its eligibility policy and made it more flexible.

In essence, anyone who had asked the question and had been told 90 days, needed to know it was now 120 days. HSBC would have been on notice that this information was important to those particular customers and ought to have made sure they were made aware of the change. It could do that either by contacting those customers directly, or by making its general communication clear. But HSBC knew it had given important information to them, they were relying on what they were told and so it had a duty to let them know the situation changed.

Of course, that invites the question of how HSBC should identify those to whom it owed this duty. I wouldn't expect it have to trawl through every single record of customers whose rates were due to expire within the new window to see who'd enquired (as Ms Y had done shortly before the change) and who had not. That would not be practical.

Where this case stands or falls, therefore, is with the letter HSBC sent out, which in Ms Y's case was on 6 September 2022. What I would expect HSBC to have done is to have used that letter to draw the attention of affected borrowers to the policy change, and ensure they had the means to understand why they'd received the letter. Ms Y's case is that the letter didn't specifically say the window had opened up for her; she took it to be general information on current rates from which she had no reason to infer the policy had changed.

In my view, Ms Y is right; the letter didn't do enough to draw her attention to the new 120-day window that meant she now was eligible to apply for a new rate sooner than 3 October 2022. Had it done so, I've no doubt that Ms Y would have responded immediately, and secured a five-year fixed rate as soon as she received the 6 September 2022 letter.

To remedy this this complaint, HSBC should allow Ms Y the opportunity to substitute a comparable five-year rate from those available between 6 and 21 September 2022 in place of the deal she eventually took out, if that would be beneficial to her. If that happens, HSBC will have to refund to Ms Y the overpayments she has made in the meantime, along with interest on the refunded amounts. Alternatively, Ms Y can opt for any overpayments and interest on overpayments to be applied in reduction of the capital balance of the mortgage, without them counting towards any allowance in the mortgage contract before an early repayment charge becomes due.

Also, as redress for having had to make the higher payments in the interim, I consider HSBC should pay Ms Y a suitable amount of compensation. The sum I'm currently minded to award is £150.

In its response to this provisional decision, I'd ask HSBC to provide details of all five-year fixed rate deals that were available between 6 and 21 September 2022, along with details of the five-year interest rate product Ms Y did take out, for comparison purposes."

Miss Y has accepted the provisional decision; HSBC has not. It disagreed with my view that the letter of 6 September 2022 didn't do enough to let Ms Y know she was eligible to apply for a new rate, or that the web page was difficult to find. Therefore, it didn't provide the rate information I asked it to include with its response.

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.

I've considered afresh everything that both parties have said and provided. Having done so, I won't be changing my decision. However, I'll address HSBC's comments.

I take HSBC's point about the letter containing a link and a QR code that would take the reader direct to the relevant page on its website. However, I said in the provisional decision that the website update wasn't what the outcome turned on. Ms Y would still have needed a reason to click on the link, or scan the QR code.

I've looked at the sections HSBC has highlighted from the letter which it says would have let Miss Y know she was eligible for a new rate. That might be the case for those who received the letter not having been told on the phone that the window was 90 days. But for those who had held that conversation, the letter needed to say more, not least because HSBC had no easy way of distinguishing those borrowers who had called from those who had not.

When Ms Y accessed the page online, it wasn't because of what the letter said. It was because she had by then found out on the phone on 21 September 2022 that she was eligible due to the expansion of the window to 120 days.

My final decision

My final decision is that I uphold this complaint, by ordering HSBC UK Bank Plc to do the following:

- allow Ms Y the opportunity to substitute a comparable five-year rate from those available between 6 and 21 September 2002 in place of the deal she eventually took out, if that would be beneficial to her;
- refund the differential interest Ms Y has incurred each month since 1 January 2023 or opt for any overpayments and interest on the overpayments to be applied in reduction of the capital balance of the mortgage, without them counting towards any allowance in the mortgage contract before an early repayment charge becomes due;
- pay interest on each refunded amount, at 8% simple per annum* from the date of each refunded amount was paid to the eventual date of settlement; and
- pay Ms Y £150 compensation for her time, trouble and upset.

*If HSBC deducts basic rate income tax from the interest element of this award, it should supply Ms Y with the relevant tax certificate, so that she can apply to HMRC for a refund if her wider circumstances allow.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 23 October 2023.

Jeff Parrington

Ombudsman