

The complaint

Miss O and Mr T complain that the mortgage offer they got from HSBC UK Bank PLC was withdrawn because they didn't pay the Early Repayment Charge ("ERC") on their existing lending. But Miss O and Mr T said HSBC didn't tell them how or when to pay this.

What happened

Miss O and Mr T told us that in summer 2022 they applied, through a broker, to take out a new mortgage deal with HSBC. They didn't manage to take up HSBC's offer. HSBC said that was because they'd never paid the ERC to get out of their old mortgage deal. But they felt that wasn't fair, because HSBC didn't tell them how to make a payment, or even when this payment was due.

Miss O said she'd called HSBC to make payment on the last day before the offer expired, 17 November. She said she didn't have a reference number she needed, so she planned to just call back, but HSBC hadn't told her that the offer was expiring that very day. So she called back the next day to make payment, and was then told the offer had expired.

Miss O and Mr T said they were paying much more on their mortgage now, because of this. They were expecting monthly payments of around £850, but were now paying almost £1,000. They wanted HSBC to honour the original rate that it had offered them in July 2022.

HSBC said that its previous offer of a mortgage deal to Mr T and Miss O, which was made in late 2020, was clear that they would need to pay an ERC if they wanted to bring that deal to an end before 31 December 2022.

In July 2022, Mr T and Miss O applied for a new rate, which would mean their existing deal would end before this date. So they needed to pay the ERC on their existing lending.

HSBC pointed out that this was a broker application. So HSBC communicated with the broker. It said it expected its messages to be passed on to Mr T and Miss O by that broker.

HSBC noted that when it issued the July 2022 offer, that was subject to the following condition – *"Where applicable, you are required to pay any existing Early Repayment Charges before we will switch your mortgage."* This offer also said that it was valid until 18 October 2022, but after that date it may change.

Although that special condition didn't make clear that an ERC actually applied in Mr T and Miss O's case, HSBC said it had messaged their broker on 5 October to prompt payment of the ERC on Mr T and Miss O's existing lending. It said it could see this message had been read, but no payment was received, before the expiry date of 18 October 2022 set out on the offer.

HSBC then messaged the broker again on 17 November, asking once more for payment. The offer had been due to expire on 18 October, but HSBC said it had extended this offer by 30 days, as it had changed its policy on how long mortgage offers would last, not long after

Mr T and Miss O had received their offer. So on the date when it messaged the broker again, it would still have honoured this rate for Mr T and Miss O.

The broker didn't contact HSBC until 18 November, when it asked how much the ERC would be. HSBC told the broker it couldn't say, that information was given to clients when they call to make payment. HSBC also mentioned then that the planned mortgage switch date had already passed, it was about a month earlier and the ERC hadn't been paid. (The call ended at this point, the recording doesn't indicate why.)

HSBC didn't get the ERC payment, and it cancelled the rate switch on this mortgage on 20 November. On 1 January 2023, Mr T and Miss O's mortgage reverted to a standard variable rate, and they have since taken up a different mortgage deal with HSBC.

HSBC didn't think it had done anything wrong, and it wouldn't honour the previous rate for Miss O and Mr T.

Our investigator didn't think this complaint should be upheld. She said Mr T and Miss O's previous mortgage offer was clear that an ERC was payable if that deal was ended before 31 December 2022. So Mr T and Miss O did have to pay an ERC. And the special conditions of their new offer said HSBC wouldn't let them switch to this new offer until any ERC due on their existing lending had been paid. That new offer also had a clear expiry date.

Our investigator said HSBC had shown us it messaged Mr T and Miss O's broker on 5 October 2022 asking for the ERC payment to be made. She said she wouldn't expect HSBC to contact Mr T and Miss O directly, when they'd applied through a broker. Our investigator didn't think it was HSBC's fault that Mr T and Miss O lost their mortgage offer.

Miss O replied, to disagree. She said lots of HSBC's complaints were upheld, which showed it wasn't reasonable. And she said HSBC had never told her and Mr T how to pay the ERC. They didn't know if this would be taken automatically, or perhaps added to their monthly direct debit payments.

Miss O didn't think it was fair for HSBC to extend their offer to November, without informing them of that change. She thought HSBC should have resent an offer letter if the details had changed.

Miss O repeated that when she tried to pay, she was told she'd need to call back. She said it was unfair for HSBC not to tell her on that call that the offer was due to expire at midnight that night. She wanted our service to listen to this call.

Our investigator didn't change her mind. She said it wasn't unusual for HSBC to talk directly to the broker in a broker application. She thought it was the broker's responsibility to pass on messages to Mr T and Miss O. But Miss O still didn't think this was fair. Because no agreement was reached, this case was passed to me 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.

I understand that this complaint is important to Mr T and Miss O. So I'm sorry to have to tell them that I've reached the same overall conclusion on this complaint as our investigator.

I know that Miss O has referred to other complaints against HSBC. But I'm only looking here at what has happened in this case.

Mr T and Miss O's previous mortgage offer, from 2020, did explain when an ERC would be payable. And I think HSBC had made paying that ERC on the old lending, a condition of the new offer. So I'm satisfied that an ERC would be payable to end that deal, before Mr T and Miss O could take up the offer HSBC made in July 2022.

Mr T and Miss O say they just didn't get any information from HSBC on how or when to make the payment. But, as our investigator said, when someone's applying through a broker, the bank would usually talk to the broker. I don't think it's unreasonable or unfair here for HSBC to have sent messages directly to the broker, and for it to have expected those messages would be passed on.

HSBC said it prompted the broker to make sure the ERC was paid on 5 October. I've seen that message, and I can see it included details of the number Mr T and Miss O needed to call to make payment. So I think this information was given to Mr T and Miss O's broker.

HSBC's offer was valid until 18 October 2022. The deadline was clear in its offer, and HSBC had prompted payment of the ERC well before this deadline. So payment should have been made by then. I don't know why that didn't happen, but I don't think it was HSBC's fault.

Mr T and Miss O also complained that HSBC then extended their offer without telling them, which they said was also unfair. But I don't think it's unfair for HSBC to say that it would have honoured this offer for a bit longer than it actually had to.

HSBC has told our service it had issued the offer with 90 days of validity, to expire on 18 October. But then its underlying policy changed, and it started issuing offers with 120 day validity. That's why it would still have honoured this offer up until mid-November.

As Mr T and Miss O hadn't paid the ERC, HSBC sent another reminder to the broker on 17 November. It has told us that it would still have honoured the rate it had previously offered, at this point.

Miss O said she called HSBC on 17 November, to pay her ERC, but was told she needed a reference. She said she was told she could call back the next day, but later discovered her offer had actually expired at the end of the day of her call, 17 November. So she told us that when she called back the next day, she was told she could no longer take up this offer.

I asked HSBC to send our service the recording of this call. In its response, HSBC said it has no recording, or other record of any call from Miss O on 17 November. It doesn't have any call recording for the following day either. It does have a recording dated 22 November, which is when Miss O was told her offer had expired. It sent us that, and I've listened to it.

HSBC said it discussed the application with Mr T and Miss O's broker on 18 November, and it told the broker then that the offer had already expired, so it's not clear from this call if HSBC would still have honoured the offer on this date. But the payment wasn't made right away, and HSBC cancelled the application on 20 November.

Miss O said she called HSBC on 17 November to make payment, then again on 18 November when she was told the offer had expired. But she also told us that the email she got from her broker telling her to pay the fee was received on 21 November. She showed us an email in reply, dated 22 November, saying HSBC needed a reference, and a further email chain giving that reference, then explaining Miss O has been told the offer had expired.

Considering all of this evidence, I haven't been able to see that Miss O called HSBC on 17 and 18 November, as she said. I think it's more likely she called HSBC to make her payment on 22 November, in line with the recording we do have. And we know that HSBC had already cancelled the application, two days earlier. Given that this was well after the deadline given to the broker (and I understand also to Mr T and Miss O) in the July offer, I don't think it was unreasonable for HSBC to say it would no longer honour the offer then.

So I haven't been able to see that Mr T or Miss O were misadvised by HSBC about the validity or expiry date of their offer. I don't think it's HSBC's fault that Mr T and Miss O didn't make the required payment before this date. I know that Mr T and Miss O will be disappointed, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O and Mr T to accept or reject my decision before 12 January 2024.

Esther Absalom-Gough
Ombudsman