

## **The complaint**

Mr K complains that HSBC UK Bank Plc wouldn't allow him to take a six month payment holiday on his mortgage.

## **What happened**

Mr K has a mortgage with HSBC. The mortgage is secured over a leasehold property. Mr K was in arrears on the service charge owed to the freeholder and the freeholder was chasing him for payment, threatening forfeiture of the lease.

Mr K agreed with the freeholder to pay £644 per month for six months to clear the service charge arrears. But he didn't think that he could afford to pay this amount while also dealing with his other regular outgoings. So he asked HSBC to agree to a payment holiday on his mortgage to free up money to pay the service charge arrears.

HSBC refused to agree. It said that Mr K was making his mortgage payments and – having looked at his income and expenditure – it thought he could afford to continue to do so. It said that a payment break would lead to the mortgage going into arrears which it didn't think was in Mr K's best interests.

Mr K complained. He said that because of HSBC's refusal he hadn't been able to keep to the payment plan agreed with the freeholder, and was now facing legal action over the service charge, with extra legal costs to pay. And he'd recently been told by his employer that he was at risk of redundancy.

One of our investigators looked at his complaint but didn't uphold it, so Mr K asked for it to be reviewed by an ombudsman. He explained that while his complaint had been with us he had asked HSBC to add the service charges to his mortgage balance instead, but it had refused to do so. As a result he'd been taken to court by the freeholder – when the freeholder obtained judgment and issued a forfeiture notice HSBC then did agree to add the costs to the mortgage balance. But by then the amount Mr K owed had increased substantially because of legal costs – which he said could have been avoided had HSBC acted sooner. He said that he now had a County Court judgment (CCJ) recorded against him, which would impact his ability to move away from HSBC or take any other credit in the future, and may also impact his future employment prospects.

## **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'm sorry to hear of the difficulties Mr K has had. I've seen the service charge arrears were because of unexpected expenditure. I understand Mr K struggled to make up the payments, especially with other things that were going on. And that's why he asked HSBC for help.

But in deciding this complaint, I need to think about whether HSBC acted unfairly. And after thinking about things very carefully, I'm not persuaded of that.

A payment holiday is a specific thing – it's a contractual right, included in the mortgage offer, to stop making payments for a period of time. So I've checked whether Mr K's mortgage includes this feature. It doesn't – so Mr K has no right to stop making payments under the terms of his mortgage agreement.

That means that if he were to miss any payments, his mortgage would go into arrears. It's possible to go into arrears by agreement – an arrangement – with a lender. But HSBC wouldn't agree to that in this case, because it didn't think it was appropriate – it thought Mr K ought to prioritise his mortgage over other expenditure. Having looked at his income and expenditure – including the increased service charge – it thought the mortgage would still be affordable. I think this was reasonable based on the information Mr K gave at the time.

I don't think it was unfair that HSBC didn't initially agree to pay the service charge on his behalf when Mr K asked it to. Essentially he was asking for further borrowing on his mortgage – which HSBC isn't allowed to agree to without detailed affordability checks.

HSBC did pay the service charge, and add it to Mr K's mortgage, once the freeholder had obtained a CCJ. This is because once there was a CCJ, the freeholder was entitled to apply for forfeiture of the lease. If that happened, HSBC would lose the security for the loan to Mr K. Under the terms and conditions it's allowed to pay debts – such as service charges – on Mr K's behalf if its security is at risk. But the security wasn't at risk until the freeholder had obtained a CCJ and was in a position to apply for forfeiture.

I appreciate this left Mr K in a very difficult position. HSBC wouldn't agree to lend him the money for the initial demand, because that would involve further borrowing. But it did pay later, when the bill was much higher because of the legal costs. That's because by that point it was no longer a discretionary application for further borrowing, but a contractual power to recover from Mr K costs it had incurred in protecting its security.

I understand it might be frustrating for Mr K to appreciate the difference between those two things, and that it resulted in him ending up with a CCJ and a higher bill. But I don't think HSBC acted unfairly. Mr K's mortgage didn't include payment holidays. HSBC didn't agree to arrears by arrangement because it seemed that Mr K could afford the payments he'd agreed to, and didn't agree to lend him more money to cover the costs. When Mr K didn't then make payment, with the result that his lease and HSBC's security was at risk, it used its contractual power to protect the security. While there were unfortunate consequences for Mr K, those were reasonable decisions for HSBC to make.

Unexpected costs and repairs are one of the risks of property ownership. It's unfortunate that this has caused Mr K financial problems, but I'm afraid I don't think I can fairly hold HSBC responsible for that.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 9 April 2024.

Simon Pugh  
**Ombudsman**