

The complaint

Mr D's complaint arises from his mortgage account held with HSBC UK Bank Plc. Mr D says he's been pressurised by HSBC in relation to mortgage arrears, as a result of which he had to use savings to pay off part of the mortgage arrears.

To settle the complaint Mr D would like HSBC to pay him compensation of £5,000.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr D being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr D's mortgage with HSBC has been in arrears since 2014. By 2023 the arrears were around £8,400 and in April 2023 HSBC issued a final demand for repayment of the entire mortgage balance, but inviting Mr D to discuss his situation with the bank. The letter also signposted Mr D to various advice agencies. On 23 May 2023 Mr D paid a lump sum of £3,000 to reduce the arrears.

On 31 May 2023 Mr D entered into a new interest rate product, a 4.07% rate fixed until 31 August 2028. Based on Income and Expenditure (I&E) figures provided on 5 June 2023, a payment plan was agreed. However, after the bank reviewed this on 9 June 2023, it was found there was insufficient disposable income to repay the mortgage within its original term. The figures Mr D had provided were based on events that hadn't yet happened (for example, an intention to get a lodger). It wasn't therefore possible for HSBC to continue with the payment plan, and the bank withdrew it.

Mr D complained, and HSBC offered compensation of £150 for any distress and inconvenience. However, HSBC explained that it wasn't able to agree to a payment plan based on speculative future income.

A new payment plan was agreed in September 2023, based on a revised I&E.

In November 2023 Mr D brought his complaint to the Financial Ombudsman Service. He said he thought £5,000 would be more appropriate compensation, which is about the same amount of the remaining arrears.

An Investigator looked at what had happened, but overall he didn't think HSBC had acted unfairly. Whilst he understood how upsetting it must have been for Mr D to have had to use his savings to reduce the arrears, the Investigator said that a borrower in long-term arrears would be expected to prioritise the mortgage. The Investigator explained that any payment plan must be affordable and sustainable.

The Investigator also didn't think HSBC had harassed or pressurised Mr D. The mortgage had been in arrears for about ten years by the time HSBC got to the point of saying it would begin possession proceedings.

Mr D didn't agree with the Investigator and asked for an Ombudsman to review the complaint. He said that HSBC should not have issued the final demand when it knew his situation was going to improve. He said there is nothing HSBC can say in its defence, as this is a point of law and the bank shouldn't have done it.

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.

First of all, I note this is a joint mortgage account. However, the other borrower no longer lives in the property, having moved out in 2008, and has no involvement with paying the mortgage. Under our rules, although we generally need both joint account holders to bring a complaint, I have discretion to disregard this where appropriate. I'm satisfied that, given the circumstances, I can consider this complaint brought by Mr D alone.

I've noted everything Mr D has said about his circumstances and I've taken note of everything he's told us. To protect his privacy, I won't repeat the details here, but I have no doubt this has been a difficult time for Mr D.

The mortgage had been in arrears for nine years at the point HSBC issued its demand. There are certain obligations placed on mortgage lenders to treat customers fairly in relation to mortgage arrears, so I've looked at whether HSBC has acted fairly and reasonably in its handling of the arrears.

The starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it. The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears.

A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

I've looked at what Mr D told HSBC about his financial situation. On 15 March 2023 he explained that a claim for Support for Mortgage Interest (SMI) had been made to the Department for Work & Pensions (DWP) as long ago as October 2022, but there was a waiting period of 39 weeks before any payment would be made by the DWP. I can understand how worrying this must have been for Mr D, but HSBC has no control over the length of time the DWP takes to process SMI claims. Mr D also said he was looking to take in lodgers.

On 28 March 2023 Mr D was signposted to independent financial advice in relation to the implications and potential complications of taking in lodgers. However, Mr D declined this. A letter was sent to Mr D on 12 April 2023 about engaging with HSBC. However, no further contact was made and so on 20 April 2023 the final demand was issued.

I don't think this was unreasonable in the circumstances, nor was it (as Mr D suggests) unlawful. In the absence of credible payment proposals, given the length of time the account had been in arrears, I'm satisfied HSBC was entitled to issue the demand. Whilst I can appreciate this caused Mr D some upset, I'm not persuaded it was unfair or unreasonable for HSBC to have acted as it did.

Following the demand, Mr D engaged in a more meaningful way with HSBC about repayment of the arrears, trying to arrange a payment plan.

The figures provided by Mr D on 5 June 2023 resulted in a payment plan being agreed that, on more detailed scrutiny, wasn't affordable, and which wouldn't result in the arrears being cleared before the mortgage term expired. I'm therefore satisfied that it was reasonable for HSBC to withdraw this a few days later. It wouldn't have been right for this plan to proceed, given that it was unaffordable and wouldn't therefore assist Mr D in resolving his financial difficulties.

I note that in July 2023 and August 2023 Mr D had further discussions with the bank to try to set up a payment plan. Mr D told HSBC on 5 July 2023 that he had some self-employed work lined up until September 2023, but was limited in how much he could earn due to his benefits situation. Mr D also confirmed on 9 August 2023 that he had a lodger. Mr D said he had the funds to clear the arrears within a reasonable time, but didn't want to, preferring to repay them over the remaining term of the mortgage. Mr D also told HSBC that he had other expenses that he hadn't declared, and was asked for details of these to go on the I&E, but Mr D declined to provide the information.

On 22 August 2023 Mr D said that the salary of £500 per month he'd been expecting hadn't materialised. Mr D said that he could afford an additional £109 per month pending his SMI claim being paid. On 31 August 2023 it was agreed that from September 2023 Mr D would pay an additional £70 per month to clear the arrears.

I accept that it was upsetting for Mr D to have to use his savings of £3,000 to reduce the mortgage arrears. Whilst I appreciate Mr D might have wanted to retain these savings as a safety net, it was a greater priority to reduce the arrears, particularly as Mr D had been made aware that the bank was considering legal action. I don't think that HSBC pressured Mr D into doing this, nor was the bank pressuring him to sell the property.

HSBC was under a duty to help Mr D achieve his financial objectives, and I'm satisfied the bank's notes are persuasive that HSBC was trying to work with Mr D to keep him in his home. No legal action was begun, and a payment plan was eventually agreed.

Overall, I'm not persuaded HSBC did anything wrong in April 2023 by issuing a demand for payment of the mortgage, given the long-standing arrears and the lack of payment proposals.

I've noted Mr D's request that HSBC should pay him £5,000 for the upset he says this caused him. However, I'm not persuaded there is any basis on which it would be fair or reasonable to order HSBC to pay compensation for this, given that I'm satisfied the bank acted reasonably when issuing the demand.

In relation to the withdrawal of the payment plan agreed on 5 June 2023, I think the £150 HSBC offered Mr D for any distress and inconvenience caused is fair and reasonable in all the circumstances. I therefore don't require HSBC to do anything further. If Mr D wants to accept the £150, he should contact HSBC about this.

My final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 September 2024.

Jan O'Leary
Ombudsman