The complaint

Mr and Mrs A complain about what happened when interest rate rises meant they were no longer paying enough to their mortgage with HSBC UK Bank Plc trading as first direct ("fd"). They said it didn't alert them to the arrears, so their credit files are affected.

What happened

Whilst this complaint is brought by both Mr and Mrs A, as the mortgage is in both their names, our dealings have been with Mr A. So I'll mainly refer to him in this decision.

Mr A said he and Mrs A had held an interest only mortgage with fd for around 15 years. And he said he'd never once missed a payment. He said that in early 2023, he had been receiving messages asking him to call fd, but he assumed this was marketing, and ignored it. Mr A said he then got an email asking him to contact the bank, so in June 2023 he rang. That was when he first found out that his mortgage was in arrears. Mr A stressed that none of fd's earlier attempts to contact him had mentioned arrears.

Mr A said he'd paid the arrears off straight away, but both his and Mrs A's credit files had already been affected, and Mr A said a business that he runs also couldn't get finance now because of this. He said he'd never missed a mortgage payment, and he'd never heard of a bank not telling its customer about arrears. Mr A wanted fd to clear his and Mrs A's credit files of the arrears markers.

fd said it did think it had made a mistake here. But the mistake wasn't quite what Mr A thought.

fd said that Mr and Mrs A have an offset mortgage. So some of the interest due on their mortgage is covered by interest on their savings. That doesn't cover all the mortgage though, and Mr and Mrs A paid the remaining amount of mortgage interest by standing order each month. They previously were paying more than required each month to cover the interest, but then interest rates slowly rose, at first eroding their overpayment, and then exceeding the amount they paid each month.

fd said Mr and Mrs A hadn't been covering the whole of their mortgage payment since May 2022. But it accepted that it hadn't got in touch with them at the time. It said it had been trying to contact them since November 2022, and listed its attempts to contact them, most of which were through phone messages.

fd said it was sorry it hadn't tried to contact Mr and Mrs A in February and in April 2023, and it said it had paid £150 to say sorry for that. But it did think it had made enough attempts overall to get in touch with them. And it said it wouldn't remove the arrears which had been recorded on their credit files. fd said it hadn't recorded arrears prior to its attempts to contact Mr and Mrs A in writing, so the first arrears didn't show until March 2023. Although it thought it should have chased the arrears sooner, fd felt the way it had recorded the arrears was fair.

Our investigator didn't uphold this complaint. He said fd's payment of £150 did make up for its initial failure to contact Mr and Mrs A, when their standing order no longer covered their monthly mortgage payments. But after that, fd did repeatedly try to get in touch. He thought it had done all it was expected to do.

Mr A didn't agree. He said other banks would have made clear that they were trying to get in touch about arrears. And he said the payments they had made, could have been allocated differently by fd to minimise the damage to their credit files. Because no agreement was reached, this case was then passed to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

> Mr and Mrs A took out a mortgage with fd some years ago. It appears from the offer document that fd has sent, as if this borrowing was already in two parts, at that time.
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> This mortgage has two sub-accounts. The account number for the larger loan part ends _719, and the account number for the smaller loan part ends _727. Unusually, these sub- accounts report separately to credit reference agencies. fd says this is what it would expect, but it hasn't been able to show our service where it was explained to Mr and Mrs A that this would be the case.
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> Mr and Mrs A have offset some savings against their mortgage, and they previously had a standing order set up to pay the remaining interest. It's now clear that this standing order ceased to be sufficient to pay all the interest due on both parts of this mortgage in May 2022.
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> I've asked fd to show me the documentation that Mr and Mrs A would have received, to let them know that they needed to increase their monthly payment. They showed us a letter notifying customers of an increase in mortgage interest rates. That letter includes this –
>
>> *If your monthly interest is debited to your mortgage account*
>>
>> *It's your responsibility to adjust your standing order to ensure you remain on track to repay your outstanding mortgage capital by the end of your mortgage term.*
>
> But it doesn't tell Mr and Mrs A how much they need to pay, to make sure that any standing order does cover the interest. Instead, it says this –
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>> *"We'll let you know what your new monthly interest payments will be on your monthly pre-notification statement."*
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> I asked fd to show our service the monthly pre-notification statement. It says it doesn't keep copies of these. It has sent our service a template for the document it issues if customers ask for a copy of the pre-notification statement. That is a very short document, which states the interest which will be applied to the mortgage. So there does not appear to be any reminder that this needs to be matched against the monthly standing order, and customers may need to adjust this. I do think these documents could have been rather clearer in terms of alerting Mr and Mrs A that they would need to increase their monthly standing order.
>
> Mr and Mrs A started falling behind on their mortgage payments in May 2022. I would usually expect that any such payment shortfall would be brought to a customer's

attention promptly, in line with the requirements of the FCA rules in this area. But here, fd accepts that it didn't contact Mr and Mrs A about the arrears promptly.

fd has listed its attempts to contact Mr and Mrs A. I note that this is predominantly phone contact. The relevant FCA rules do seem to me to require that notification of arrears is done in a durable format. I think this is all the more important in this case, because Mr A said none of the messages fd left for him, mentioned arrears. He told us he thought these were marketing calls, and he was just ignoring them.

fd first wrote to Mr and Mrs A at the end of March. It told us it hadn't recorded any arrears with credit reference agencies prior to this. But it also showed us an internal note, which shows that fd asked its credit records team to register missed payments in respect of February (which the relevant team records a month behind, like many other lenders, so this missed payment shows for March 2023).

fd hadn't issued any letter about arrears until the end of March. Even if Mr and Mrs A had safely received and read this letter, they may still not have been able to make payment in time for March 2023. So I don't think it's fair to begin recording arrears, as if Mr and Mrs A had missed a payment in February.

fd said it wrote again at the start of April. By this time I do think Mr and Mrs A had been sent appropriate notification of the payments they had missed. I understand that Mr A says these letters didn't arrive, but I don't think that would be fd's fault. So I think fd should start recording missed payments for April 2023 onwards. And because fd's credit records team reports a month behind, that means the first missed payment will show in May 2023.

Mr A said because this mortgage reports twice to their credit files, both he and Mrs A had two sets of missed payment markers. He said that seemed unfair.

fd said that this is what it would expect, and it also said that both parts of the mortgage were in arrears. I'm not clear that fd is right about that.

Mr and Mrs A had savings offset against their mortgage, and they were making payments throughout this period. It seems unlikely that those payments, plus the accumulated interest, were insufficient to pay the smaller of the two loan parts. And I note that neither of the letters fd sent to tell Mr and Mrs A they were in arrears, mentioned arrears on the smaller of the two loan parts. For those reasons, I think that fd should remove all arrears reported to the smaller of the two loan parts, from Mr and Mrs A's credit files.

My provisional decision doesn't require fd to clear Mr and Mrs A's credit files completely. fd may report arrears on the larger of the two loan parts, account number ending _719, of one month in respect of April (recorded for May 2023) and arrears of two months in respect of May (recorded for June 2023). Mr A cleared all the arrears in June, so their credit files should cease to show arrears from July 2023.

I note fd has already made a payment of £150 in respect of its earlier failure to keep Mr and Mrs A informed of the position of their mortgage. Because it appears to me that fd has also caused further difficulties after this, and that this has caused Mr and Mrs A some distress, I think that fd should pay a further £150, in addition to the amount it has already paid.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides have now replied.

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.

Mr A replied to accept my provisional decision, and fd replied to object strongly. It wanted me to reconsider.

fd said it had made an extensive number of attempts to get Mr and Mrs A to respond to it, and didn't think it was responsible for them not doing so. fd said it was unreasonable for Mr A to have assumed this was just marketing, and ignored it, he ought to have responded.

fd said the prenotification of charges notifications it had sent showed a higher sum that the standing order then in place, so fd thought that should also have alerted Mr and Mrs A to the fact that their standing orders weren't covering the interest due.

fd said if Mr or Mrs A had contacted it in response to any of the above, then the problem could have been solved. It said it had already amended their credit files to reflect not pursuing the arears earlier. And given the attempts it had made, it thought that and its payment of £150 were sufficient. fd accepted it didn't write to Mr and Mrs A until after arrears had started to be recorded, but it said that didn't change the fact that requests for contact were made before that date.

I referred in my provisional decision to the relevant FCA rules which require notification of arrears to be done promptly, and be in a durable format. The relevant rules go beyond that, and set out additional information which must be supplied with this notification, to support customers who are facing financial difficulties. I also noted that fd didn't write to tell Mr and Mrs A about the arrears, until some time after its amended reporting started to tell credit reference agencies that they had missed their payments.

I also described how the information that fd says should have warned Mr and Mrs A about their existing payments falling short, appeared to me to be split across two documents, sent separately, that Mr and Mrs A would need to collate and reconcile in order to be aware that their payments weren't covering the interest.

So it's against this background, of required documentation not being sent, and the only documentation which was issued not setting out the position clearly, that I've assessed the reasonableness of Mr and Mrs A's response to fd's initial efforts to get in touch. I have considered fd's objections, but I haven't changed my mind about this.

fd also objected to what I'd said about reporting this mortgage twice to credit reference agencies. It said it had explained these two accounts are essentially aggregated into one offset interest group, and both payments needed to be covered. So it said if a customer is in arrears, all the accounts would report as in arrears. fd didn't agree that it should amend the credit files to show one account as not in arrears. And fd also said that it didn't intend to change its existing practice on this.

It's not for me here to comment on the wider implications of fd's practice of reporting more than one mortgage account to credit reference agencies. Our service isn't a regulator, and I confine my views to the case in front of me.

Looking at this case, I noted that fd had not been able to show our service that it had explained to Mr and Mrs A there would be two separate credit file reports for this mortgage, which I thought would be part of showing it was fair and reasonable here to report two sets of arrears onto their credit files.

I also said it seemed very doubtful that the payments Mr and Mrs A were making, throughout this time, weren't enough to cover the smaller of the two required interest payments. And I noted that when fd did eventually write to Mr and Mrs A about the arrears on their mortgage, the documentation it sent then only mentioned one of the two accounts being over its credit limit. The smaller debt, account ending _727, was shown on that documentation as within its limits. So it does appear as if the position fd takes now about appropriate arrears reporting in these circumstances, is not the same as that set out in the arrears notification letters it issued at the time.

Given the above, I still think it's reasonable for the arrears recorded on Mr and Mrs A's credit file to be amended in the way I suggested, to remove the arrears for the smaller debt, and to amend the arrears recording for the larger debt.

I have considered fd's objections to my provisional decision, but for the reasons set out above, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that HSBC UK Bank Plc trading as first direct must amend Mr and Mrs A's credit files for the period of February to July 2023, so that no arrears are recorded for loan part ending _727, and also so that loan part ending _719, shows only arrears of one month in respect of April (recorded for May 2023) and arrears of two months in respect of May (recorded for June 2023).

HSBC UK Bank Plc trading as first direct must also pay Mr and Mrs A a further £150, in addition to the amount it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 2 August 2024.
Esther Absalom-Gough
Ombudsman