

## **The complaint**

This complaint's about a mortgage that Mr F holds with HSBC UK Bank Plc. Mr F, who has serious health problems, has been in long-standing arrears, and HSBC has turned down his request for a term extension and rejected a proposed payment plan that relied on financial support from family. Mr F thinks that's unfair. He's also unhappy that, following an earlier complaint about the same broad subject, HSBC hasn't provided the help we said it should, and that HSBC has contacted him directly instead of a relative, Mrs S, who is authorised to represent him with the bank, and with us.

## **What happened**

The broad circumstances of this complaint are known to Mr F, Mrs S and HSBC. I'm also aware that the investigator issued a response to the complaint, which has been shared with all parties, and so I don't need to repeat all of the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mr F being identified. Instead I'll give a brief summary of the main points, 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.

Mr F's mortgage has been in arrears for about eight years; in 2016, we received a complaint about how HSBC was treating him. The adjudicator who looked into it recommended HSBC defer recovery action for a year, during which Mr F would seek to make interest-only payments, with a view to restoring full payments thereafter. The complaint was resolved informally on that basis.

The current complaint started in 2021, after HSBC rejected a 2020 proposal to extend the mortgage term, and Mrs S discovered the bank had been contacting Mr F directly, which made his health problems worse. A further proposal made in 2021 asking that HSBC reduce the monthly instalment from £740 to £500 – which would then be paid by a family member – was also rejected, albeit after a delay when HSBC initially failed to reply to a letter.

Our investigator recommended this new complaint be upheld in part only; he recommended HSBC pay Mr F £500 for communication failures, but wasn't persuaded its decisions to reject the proposals had been unfair. HSBC accepted the recommendation; Mrs S has asked for it to be reviewed by an ombudsman.

## **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference

from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs S wants us to consider whether HSBC kept the outcome of the 2016 complaint; I won't be revisiting that, and I'll explain why. The agreement reached in 2016 wasn't a legally-binding decision from an ombudsman. It was an informal settlement, brokered by the adjudicator, whereby Mr F was afforded more time, one year to be specific, to see if his situation could improve to the point where he could manage his mortgage commitments.

If Mr F or Mrs S on his behalf thought HSBC wasn't adhering to the spirit of the informal settlement, it was open to them to ask the adjudicator to re-open the case and have it referred for a final decision from an ombudsman. All I'd add here, largely for context, is that whatever Mr F and Mrs S may feel about the degree of support HSBC has or hasn't offered since then, it would be hard to conclude that Mr F's situation has improved to the extent necessary for him to manage his mortgage commitments. That's why we are where we are now, seven years on rather than one.

It's entirely right that HSBC should compensate Mr F for its communication shortcomings; there's a reason HSBC should be dealing with Mrs S rather than Mr F directly. Also, given Mr F's underlying health situation, a late (or missing entirely) response has a disproportionate effect on him. In all the circumstances, I agree with the investigator that compensation of £500 is fair, and I'm glad to see HSBC has accepted this.

That brings me to the crux of the current complaint. HSBC's rejection of the two proposals put forward since 2020. The difficulty with these proposals is that both were predicated on family members maintaining the payments, either fully or in part, instead of Mr F doing so himself. But HSBC isn't willing to factor the family members' financial situations into the affordability assessments it makes, and I wouldn't expect it to. Mr F's family members, however well-meaning and genuine their willingness to help, aren't parties to the mortgage, and they haven't given a personal covenant to pay the mortgage; so HSBC has no recourse against them in the event the mortgage isn't paid.

Mrs S has expressed frustration at spending a lot of time putting the second proposal together, only for it to be rejected for much the same reason as the first. She says HSBC should have been more explicit about its policy regarding financial support from family. I understand her sentiment, but lenders don't generally reveal details of their lending policy as they're commercially sensitive. Also, whilst I'm entirely satisfied it's not the case here, there's also a risk of borrowers' circumstances being manipulated and/or misrepresented to maximise the chance of success if lenders' criteria are too well known.

Mrs S has told us of a new proposal she wants HSBC to consider; that is, of Mr F down-sizing to a smaller property with a more affordable mortgage. That's not part of what I'm considering here, as it has happened since the complaint was referred to us and so isn't covered by the final response HSBC provided.

It's right that HSBC should consider this fresh proposal, but to be clear, nothing I say here obliges HSBC to agree to it. This latest, and indeed any, future request for a change to Mr F's mortgage, will still be subject to HSBC's assessment of the proposal's long-term viability at the relevant time.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on

the outcome. I can see how important this is to Mr F. That's natural and entirely understandable when you're as close to a situation as he is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

Having done that, and having considered everything that both parties have said and provided, I don't find that HSBC has treated Mr F unfairly in its actions since the previous complaint was concluded. Mr F is in a horrible situation, and he has my sympathy. But treating someone fairly doesn't simply mean agreeing to what they want, and not every situation is capable of being resolved to the satisfaction of all parties.

### **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I direct HSBC UK Bank Plc to pay Mr F £500. 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 Mr F to accept or reject my decision before 14 February 2023.

Jeff Parrington  
**Ombudsman**