

The complaint

Ms T complains that HSBC UK Bank Plc isn't complying to a family court order which states that her ex-husband's name should be removed from the mortgage.

What happened

I've intentionally confined my summary of this complaint to a minimum. The background and facts of this case are of a sensitive nature. Our decisions are published, and it's important that I don't include any information that might result in Ms T being identified.

The broad circumstances of this complaint are known to Ms T and HSBC. Our investigator has also issued a comprehensive response to the complaint setting out its background in more detail, which has been shared with all parties, and so I trust I need not repeat the details here.

Ms T owns a property with her ex-husband (who I'll refer to as X). The property is mortgaged through HSBC.

Ms T describes what sounds like a very difficult relationship with X. I truly empathise with her circumstances. Ms T and X got divorced following a relationship breakdown.

During divorce proceedings the Family court initially ruled that the property in question be sold. X was ordered to make the contractual mortgage payments until the sale, and he was required to indemnify Ms T of any accrued arrears on completion of the sale.

Ms T appealed the outcome of the court ruling and so a subsequent hearing took place in April 2022. The court changed the sale order to a trust/transfer of ownership in Ms T's favour. The court order set out several obligations relating to the terms of the trust/transfer. As such this court order superseded the previous ruling and any obligations as set out in the previous court order.

A few months after, Ms T started to explore the option of a rate switch to make the mortgage more affordable for her and to help prevent further arrears from accruing. HSBC said that to agree a rate switch it needed both joint account holders' consent.

Ms T complained to HSBC about this. HSBC answered the complaint in September 2022. It reviewed its earlier decision and agreed to a backdated rate switch outside its usual policy and in light of Ms T's circumstances.

Ms T brought her complaint to our service in December 2022. Her complaint to us is that HSBC is not complying with the court order. To date it hasn't transferred the mortgage solely into Ms T's name. She is worried that as long as the mortgage remains in joint names, HSBC will continue to ask for X's consent to make changes to the mortgage - including agreeing a new interest rate when her current rate ends.

Ms T also complains that despite the marriage dispute marker on the account, HSBC has disclosed sensitive information to X without her consent. Ms T described the repercussions

she says she's suffered as a result of HSBC's actions, that have caused significant distress in her personal life.

An investigator looked into things and upheld the complaint. She found that by HSBC disclosing information about Ms T's intentions on the mortgage to X - it caused a significant amount of avoidable distress. She recommended that HSBC pay Ms T £500 compensation in the circumstances.

The investigator explained the process necessary to (i) remove X from the property title deeds through an application with land registry and (ii) apply for the mortgage to be transferred into Ms T's sole name.

She explained that Ms T would need to seek legal advice to remove X from the title deeds. HSBC won't have any involvement in that. HSBC should however consider an application from Ms T to transfer the mortgage into her sole name. The investigator explained it would be necessary, as part of the application process, for HSBC to ensure the mortgage payments were affordable for Ms T. She acknowledged several income and expenditure ("I&E") assessments had taken place to date – but those were to accommodate payment arrangements rather than in the context of assessing affordability of a sole mortgage. It still remained for Ms T to apply for the mortgage to be transferred into her sole name - in order to remove X.

The investigator was satisfied that HSBC had provided the right level of support to help Ms T in the circumstances – by referring her to dedicated support teams and agreeing payment arrangements to make payments more affordable for her. HSBC agreed to a lower interest rate switch with only Ms T's consent by exception. Albeit the investigator acknowledged the process took too long and the disclosure of information linked to this was the reason she awarded compensation.

Regarding the arrears on the account, the investigator explained that the terms and conditions of the mortgage set out that, in the case of a joint mortgage, both borrowers are joint and severally liable for the debt. The court order deals solely with issues between Mr T and X. The order issues no instructions to HSBC. The investigator concluded that HSBC is entitled to pursue both joint mortgage account holders for payment of the outstanding arrears. That said, HSBC should take into account what it knows about Ms T's circumstances when considering the impact of the arrears on her application for a sole mortgage. Although, she made it clear that did not mean that she could influence HSBC's decision making or guarantee a successful application.

The investigator encouraged the parties to engage about next steps and she said that HSBC should continue to acknowledge the sensitive nature of Ms T's case and deal with her account and requests for support accordingly.

HSBC accepted the investigator's view, Ms T didn't. She provided detailed submissions in response. I've summarised the key points as:

- HSBC has mis-led Ms T into thinking her transfer of equity was in process. It has asked her to complete endless I&E's but after over 18 months she's no closer to the mortgage being transferred into her sole name – which continues to impact her ability to make independent changes to the mortgage without X's involvement/consent.
- HSBC has harassed her with constant requests for I&E's and notifications of payment increases on the mortgage which HSBC is responsible for by putting her on a tracker interest rate.

- She doesn't think £500 fairly compensates her in the circumstances. HSBC's actions have led to X committing a defamation of character impacting her personal and work life – limiting her ability to develop in her career. She also says that the time spent adhering to HSBC's unreasonable requests for I&E's has led to lost hours and pay at work.

Our investigator considered Ms T's points but explained why her opinion remained unchanged. Ms T remained unhappy and asked for her case to be decided by an ombudsman.

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.

As explained, due to the sensitive nature of this case I've gone into little detail about the surrounding facts or the specifics of Ms T and X's relationship. Although I have carefully considered those facts and I do recognise that they carried weight in the divorce proceedings and is what led to the court making the order it did.

I have carefully considered all the submissions from both parties. 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 or to avoid disclosing any information in this published decision that could lead to the identification of Ms T.

I'm very sorry to hear about Ms T's situation and everything she's endured over the years. I can see from what she has said that she's been through and continues to go through a very difficult time and I empathise with her circumstances.

What I must consider is whether HSBC has treated Ms T fairly, taking into account everything it knows about her circumstances.

By the time this complaint was brought to our service Ms T's complaint regarding her inability to secure a new rate had been resolved. HSBC agreed to make the change without X's consent as an exception and it backdated the new product accordingly for Ms T. As this matter has been resolved, I won't comment on it further.

However Ms T remains unhappy that HSBC copied X into an email responding to her enquiry about the rate switch. And, she's unhappy with the compensation awarded to date. Ms T also complains that HSBC is taking too long to transfer the mortgage into her sole name.

I've considered each of these matters in turn. In doing so, I agree with the outcome our investigator has reached and largely for the same reasons. I appreciate this will be disappointing for Ms T, but I hope my reasoning explains why.

Transfer of title and transfer of mortgage into Ms T's sole name

Ms T has provided HSBC with copies of both court orders issued. She says she's been waiting since the outcome of the court hearings for HSBC to do what the court has ordered.

The initial court order states that:

“the property in question should be sold and [X] will, “...be solely responsible for and in any event indemnify [Ms T] against all future...repayments due in respect of the

mortgage...and... indemnify [Ms T] against any arrears accrued upon completion of the sale”.

The order issues no instructions to HSBC (nor would I expect a Family court order to do so) and deals solely with issues between Ms T and X. The court order provides no basis on which HSBC would be required not to continue to hold Ms T joint and severally liable for the mortgage payments or the accrued arrears. On that basis, I cannot conclude that it was unfair or unreasonable for HSBC to expect either account holder to maintain the mortgage payments including repayment of the arrears accrued.

The court order was superseded following an appeal from Ms T. The court order was varied from a sale order to a trust/transfer in Ms T’s favour.

The subsequent court order states that:

“[Ms T] may deal with [the property] as sole beneficiary including possession...and renting. [Ms T] shall use her reasonable endeavours to procure the release of [X] from any liability under the mortgage and shall in any event indemnify [X] against all such liability accruing from the making of this order. [X] shall remain liable under the mortgage and shall in any event indemnify the respondent against all such liability accrued up to the making of this order. [X] shall transfer to [Ms T] all his interest in [the property] on condition that he is released from the mortgage. In default of [X] failing to sign or execute any document necessary to affect the transfer, the documents shall be signed or executed by a District Judge...on behalf of [X].”

Once again, the order issues no instructions to HSBC to automatically transfer the mortgage into Ms T’s name. What it does say in simple terms is that X is responsible for payments due under the mortgage up until the date of the order. Ms T is liable for payments due from the date of the court order. It is Ms T’s responsibility to apply for the mortgage to be transferred into her sole name. Once released from the mortgage, X is to transfer all his interest in the property to Ms T (by way of a transfer of title). If X does not comply with the transfer of title, the District Judge will sign or execute the necessary documents on his behalf.

Based on the information available to me, I can see that Ms T has been in discussions with HSBC about transferring the mortgage into her sole name. Adding or removing a borrower on a mortgage requires varying the existing contract. As such, it’s necessary for Ms T to complete a mortgage application in her own name. And, as part of the process it’s reasonable for HSBC to assess whether the mortgage is affordable for her on her own.

Ms T complains that HSBC is responsible for delaying an application to transfer the mortgage into her sole name and that she’s been disadvantaged as a result.

It’s unclear to me why an application has not been made to date. It’s clear it’s Ms T’s intention to transfer the mortgage into her own name and HSBC is aware of that and open to an application. That said, I’m not persuaded Ms T has been impacted to the extent she says.

Ms T says she’s unhappy with her current interest rate and as long as the mortgage remains in joint names she can’t switch her current interest rate without X’s consent.

In September 2022 Ms T agreed to a variable rate, which as set out in her offer is “1.89% above the Bank of England base rate, currently 2.25%, for 1 year [the Tracker Rate period] to give a current rate payable of 4.14%, followed by the HSBC Standard Variable rate, currently 5.04%, for the remaining term of the loan”.

Ms T is unhappy that the interest rate on her mortgage is increasing, as are her monthly payments. This is the nature of the tracker interest rate she agreed to which is linked to the Bank of England base rate. I note Ms T appears to be unhappy with the advice she received in September 2022 to take this type of product. This is not a complaint that she's yet raised with HSBC and so not something I can fairly comment on in this decision, without HSBC first having the chance to respond to that complaint.

I must also note that HSBC is required, under regulation, to write to its customers when their interest rate/payments change. So I don't agree it has been acting unfairly by writing to Ms T about these changes to her mortgage, as she suggests.

In respect of the Transfer of Title, or in other words, removing X from the property deeds, Ms T would need to engage a solicitor to make the appropriate application with the Land Registry. HSBC would have no involvement in that process. Ms T might benefit from getting some independent legal advice about the next steps to do that.

A Transfer of Title and a mortgage application are two separate things – both of which require Ms T to take action to (i) submit a mortgage application with HSBC to remove X from the mortgage and (ii) seek legal advice to submit a Transfer of Title with Land Registry to remove X from the title deeds.

I've explained why I'm satisfied HSBC was under no obligation to automatically make any changes to the mortgage or the Title deeds in response to the court order.

Lastly, I've considered everything Ms T has said about the need to complete several I&E's to date. I consider that to be part of the usual process required by a lender to understand a customer's circumstances when deciding the most suitable option of helping them during a period of financial difficulty. In this case HSBC has asked Ms T to complete I&E's on a regular basis to agree and assess the affordability of ongoing payment arrangements. So I don't find it has acted unfairly in that respect.

Disclosure of information to X

HSBC accepts that it incorrectly disclosed information about Ms T's request for a new interest rate to X. What I need to decide is whether the £500 awarded to date fairly compensates Ms T in the circumstances.

When making an award for compensation, I must decide what's fair and reasonable to both sides involved, giving careful consideration to all the circumstances of this case. I also think it's important to explain that, as a service, our awards are designed to compensate consumers - not punish organisations.

When Ms T asked for a new interest rate, she says that HSBC emailed her, but also copied in X about this. This was despite HSBC knowing the history between Ms T and X. Ms T says that as a direct result, this prompted X to make contact online and she received abuse and online trolling. She reported this behaviour to the police. But was left in severe distress.

I'm very sorry to hear this happened to Ms T and I do feel HSBC should have taken steps to protect Ms T's privacy in the circumstances.

HSBC is aware of the marital dispute between Ms T and X. HSBC has it recorded on its system to not disclose certain information to X. When Ms T asked HSBC for a rate switch, HSBC should have responded directly to Ms T, as the person making the enquiry – given what it knew about the nature of the relationship between her and X. I appreciate that, at this

point, HSBC felt it needed both parties' consent to agree a rate switch. But that's something it could have told Ms T without copying in X.

I don't doubt that this situation caused Ms T significant distress and inconvenience. It's also evident a different set of sensitive circumstances apply here. Circumstances, that I'm persuaded HSBC has taken into consideration when accepting to pay this level of compensation award. I say this because in normal circumstances I wouldn't expect HSBC to award such an amount for a mistake of this extent.

However, I don't think it's fair to hold HSBC responsible for everything that happened following its mistake. I say this because much of the consequences explained by Ms T are too far detached from the mistake in question. I don't think the chain of events that occurred was a reasonably foreseeable result of the error. I'm very sorry to hear about everything Ms T has been through, but I don't think HSBC could have foreseen X would have responded in such a way to an email of that nature.

Putting things right

Having considered everything, I think a compensation award of £500 is fair and reasonable in the circumstances.

My final decision

My final decision is that I uphold this complaint and direct HSBC UK Bank Plc to pay Ms T £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 12 December 2023.

Arazu Eid
Ombudsman