

## **The complaint**

Mr A is unhappy with several aspects of the service that he's received from HSBC UK Bank Plc surrounding his joint mortgage.

Please note that the joint mortgage holder, Mr A's ex-wife, hasn't consented to this complaint. As such, I can only consider the actions of HSBC in regard to Mr A and I can't consider the actions of HSBC in regard to Mr A's ex-wife.

## **What happened**

Mr A held a joint mortgage with his ex-wife for which he was jointly and severally liable. The monthly repayment amount for the mortgage was £1,794.52.

Mr A called HSBC in May 2022 and explained that he had separated from his ex-wife with whom he was no longer on speaking terms. Mr A asked for a payment break on the mortgage as he wouldn't be able to afford the monthly payments.

HSBC conducted an income and expenditure assessment with Mr A, which showed that his monthly expenditure was more than his monthly income by a significant amount. HSBC felt that this meant that Mr A couldn't reasonably afford to pay his monthly mortgage payments. Because of this, at the start of June 2022, HSBC applied a 60-day 'breathing space' hold to the mortgage to allow Mr A time to resolve his financial position and put together a repayment proposal for the arrears that were accruing on the mortgage during that time.

In August 2022, with the 60-day hold having come to an end, HSBC spoke with Mr A about the mortgage arrears – which as of 10 August 2022 stood at £5,467.88. Mr A explained to HSBC that his financial position hadn't improved since he'd conducted the income and expenditure assessment with them a few months previously. HSBC explained to Mr A that, while they were aware of the difficult personal circumstances he was experiencing, because of the deteriorating position of the mortgage, they required a proposal from Mr A on how he intended to clear the mortgage arrears. HSBC applied a new 30-day hold to allow Mr A time to make such a proposal.

In September 2022, after the 30-day hold had expired, Mr A spoke with HSBC again and explained that a court hearing for financial settlement with his ex-wife had been arranged for 6 January 2023. Mr A asked HSBC to come to an arrangement with him regarding the mortgage payments until that time and explained that his ex-wife was still living in the property and was refusing to sell it. Mr A also confirmed that his financial position remained largely the same as he'd advised HSBC previously.

In response, HSBC agreed to a four-month payment break on the mortgage, until 10 January 2023. Under the terms of the payment break, interest and arrears would continue to accrue on the mortgage and would be reported as such to the credit reference agencies ("CRAs"), but HSBC wouldn't attempt to contact Mr A about the arrears present and accruing on the mortgage during the term of the payment break.

In January 2023, with the four-month payment break having ended, and with the mortgage

now £16,235.00 in arrears, Mr A spoke with HSBC again and explained that a second divorce court hearing had been scheduled for April 2023. Mr A also explained that he anticipated being able to sell the house following this second hearing. HSBC agreed a further payment break, until mid-April, on the same terms as the previous payment break.

On 4 April 2023, Mr A contacted HSBC and requested a redemption figure for the mortgage. HSBC sent a letter to Mr A the following day which confirmed the redemption amount as being £518,094.04.

On 19 April 2023, Mr A contacted HSBC and explained that the second divorce hearing had been pushed back to 28 April 2023. Mr A explained that he still couldn't afford to make the mortgage payments and asked for an arrangement wherein he could make interest only payments along with an added amount to reduce the arrears, with the capital balance remaining unpaid.

In response, HSBC explained that they weren't willing to provide such an arrangement and that, because of the significant arrears that were now present on the mortgage, that they would look to issue a demand for full repayment of the outstanding mortgage balance and potentially begin litigation to take possession of the property. Mr A wasn't happy about this, so he raised a complaint.

In May 2023, HSBC responded to Mr A's complaint and explained that because of the arrears on the mortgage, which at that time were £21,618.56, that they were still considering commencing litigation proceedings. But HSBC also asked Mr A to provide them with an update as to what happened at the second divorce hearing that took place on 28 April 2023.

HSBC then spoke with Mr A on several occasions during June 2023, but Mr A doesn't appear to have provided any update as to the results of the second hearing. On 27 June 2023, Mr A conducted a new income and expenditure assessment with HSBC which again showed that his monthly outgoings were greater than his monthly income. Mr A also explained that a further court hearing would be taking place the next day, and he asked HSBC if they could allow him to make interest only payments towards the mortgage for six months, in line with the recently released Mortgage Charter.

HSBC didn't respond to Mr A's request for interest only payments for six months. And on 14 July 2023, with the mortgage arrears standing at £25,207.60, they issued a final demand for full repayment of the outstanding mortgage balance - £518,377.92. The final demand gave Mr A 28 days to pay the full mortgage balance. And when Mr A didn't clear the full balance within 28 days, HSBC began litigation proceedings to take possession of the property.

A mortgage possession hearing was scheduled for 13 November 2023. But while HSBC sent a notice of this hearing to the mortgaged property – which was occupied by Mr A's ex-wife, with whom Mr A wasn't on speaking terms – they didn't send a notice to Mr A.

On 14 November 2023, the day after the hearing, Mr A called HSBC to complain that he hadn't been informed about the hearing and had only found out about it on the day it took place. Mr A also complained that HSBC's legal team had provided false information during the hearing.

HSBC responded to Mr A's complaint on 7 December 2023 and apologised for not serving notice of possession proceedings to his correct address. But HSBC didn't respond to Mr A's complaint about their legal team providing false information during the hearing.

Later that month, Mr A called HSBC and explained that a final divorce hearing had been scheduled for April 2024, and he asked HSBC to change the mortgage to interest only

repayments until that time. HSBC explained that they were unwilling to consider such an arrangement and that they were already engaged in litigation proceedings to take possession of the property. Mr A wasn't happy that HSBC wouldn't accept his request to make interest only payments on the mortgage, so he raised a new complaint with HSBC about this.

Mr A reiterated his complaint with HSBC in an email which he sent on 1 January 2024, and in which he explained that he felt that HSBC had failed to provide adequate forbearance to him in consideration of his difficult personal circumstances, including his separation from his ex-wife.

HSBC responded to Mr A's complaint on 1 February 2024 and explained that the six-month interest only repayment concession that Mr A had requested in line with the Mortgage Charter was a concession that the Charter only granted to mortgage holders who were up-to-date with their mortgage payments. HSBC further explained that because Mr A's mortgage had been in a position of arrears when he'd requested the concession, that he hadn't been eligible to receive it. And HSBC also explained that Mr A didn't meet their criteria for an application to convert the mortgage to an interest-only repayment basis to be successful.

Mr A wasn't satisfied with HSBC's response to this complaint, or with their response to his earlier complaint about not serving notice of the possession hearing to his correct address and HSBC providing false information during the legal hearing. So, he referred these complaints to this service.

One of our investigators looked at Mr A's complaint. They didn't feel that HSBC had acted unfairly in how they'd administered Mr A's mortgage, including in not allowing Mr A to change the repayment basis to interest-only on a temporary or permanent basis.

But our investigator did feel that Mr A had been unfairly troubled and inconvenienced by not receiving the possession hearing notice to his correct address and in not being told of his ineligibility to be allowed to make interest-only payments for six months because of the arrears present on his mortgage when he made that request. And because of this, our investigator said that HSBC should pay £200 to Mr A as compensation for the trouble and upset he'd incurred in these regards. Mr A didn't accept the recommendation put forward by our investigator, so the matter was escalated to an ombudsman for a final decision.

### **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 feels that HSBC haven't provided him with the level of support that they reasonably should have done. Specifically, Mr A feels that HSBC haven't adhered to the Financial Conduct Authority's ("FCA's") Mortgage Conduct of Business ("MCOB") rules.

In consideration of this point, it's important to note that this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

From a general fairness perspective, I feel that HSBC have provided Mr A with a reasonable amount of support and forbearance here. I say this because HSBC have applied a series of holds on the mortgage to allow Mr A time to recover his financial position. These holds

begun in June 2022 and ended in April 2023. This is a significant amount of time during which HSBC accepted that no payments would be made to the mortgage and represented what I consider to be a fair and reasonable opportunity for Mr A to find a solution, if such a solution was possible, to the difficult financial position he found himself in.

Mr A might argue that the separation from his wife and the subsequent divorce proceedings meant that it wasn't reasonably possible for him to recover his financial position during the time that HSBC were applying holds to the mortgage, even considering the extended length of that forbearance period.

I can appreciate how this might be the case and I can sympathise with Mr A in this regard. However, ultimately, Mr A's responsibilities and payment obligations as per the contractual mortgage agreement aren't reduced or affected in any way because of his difficult personal circumstances. And while HSBC, like all lenders, are expected to take a customer's personal circumstances into consideration and to provide support and forbearance to them, they aren't expected to do so indefinitely.

This means that, if a mortgage continues to remain in arrears, there will come a time when it's reasonable for a lender to decide that it's not reasonable to provide any further support or forbearance beyond that which they've already provided.

This can be the case if, for example, a lender loses faith that the mortgage holder will honour the arrears repayment promises that they've made, or if the lender concludes that a mortgage holder simply won't be able to recover their financial position and that of the mortgage. A lender might also decide that it's not in the borrower's best interests to let matters continue over sustained periods of time, during which further interest and charges would be added to the outstanding mortgage balance.

This appears to be how HSBC feel in this instance and given what's happened here I don't feel that it's unreasonable for HSBC to have arrived at such a conclusion. Also, given that HSBC have taken such a position, I don't feel that it's unfair or unreasonable for them to have decided to attempt to recover their financial outlay relating to this mortgage via litigation, in line with their right to do so as stipulated in the mortgage agreement.

Mr A feels that HSBC should have provided him with six months interest only payments upon request, and he's referenced the Mortgage Charter which he feels entitles him to receive this specific support. But the Mortgage Charter only applies in this way if the mortgage account holder is up to date with their payments when they request the interest only payments. And because Mr A's mortgage was already in arrears when he asked HSBC to allow him to make interest only payments for six months, he wasn't eligible to receive this support based on the Mortgage Charter.

I also don't feel that there was any reasonable requirement for HSBC to accept Mr A's request for interest only payments on a general basis. This is because when Mr A first made such a request to HSBC, he'd already been granted nearly a year's worth of payment holds and hadn't made any payment towards the mortgage during that time. And I feel that HSBC had already acted fairly in consideration of their obligations under the MCOB rules, specifically section MCOB 13, in how they had liaised with and assisted Mr A from June 2022 until this time.

Additionally, Mr A had conducted several income and expenditure assessments with HSBC throughout this period. The outcome of these assessments showed that Mr A was unable to afford any payments to the mortgage. As a result, I'm not persuaded that switching the mortgage to interest only payments would have been an affordable solution to getting this mortgage back on track.

I also note that following Mr A's requests to make interest only payments, no payments of any amount were made by him. And whilst HSBC didn't agree to convert the mortgage to interest only, there was nothing preventing Mr A from making lower payments if he felt that he could afford them.

Mr A may explain that it was always his intention to sell the property following the resolution of his divorce proceedings, and that he would have settled the mortgage at that time. But it must be acknowledged that now, in June 2024 – a full two years after Mr A was first granted a payment hold by HSBC – the property remains unsold.

HSBC allowed payment breaks whilst the divorce proceedings were ongoing. They also asked Mr A about the outcome of the hearings, but I can't see that Mr A informed them of the position reached via the hearings that would resolve the mortgage arrears. Having considered what's happened, I'm satisfied that HSBC allowed sufficient time for Mr A to wait for the outcome of the divorce proceedings before taking next steps to recover the arrears.

All of which means that my final decision is that I don't uphold Mr A's complaint that HSBC have treated him unfairly regarding the support and forbearance that they've provided him since June 2022. Rather, I feel that HSBC have provided Mr A with a fair level of support, but that Mr A unfortunately hasn't been able to recover his financial position during that time.

However, I do feel that Mr A has been unfairly troubled by not receiving the first possession hearing notice to his correct address and also by HSBC not informing him of his ineligibility to be allowed to make interest-only payments for six months because of the arrears present on his mortgage when they first should have done.

Our investigator said that HSBC should pay £200 to Mr A as compensation for the trouble and upset he'd incurred in these regards. This feels fair to me, and I can confirm that it's commensurate with what I would have instructed HSBC to have paid, had our investigator not already made such a recommendation.

In taking this position, I've considered the worry and inconvenience that these events had on Mr A, and I've also considered the general framework this service uses when assessing compensation amounts, details of which are on this service's website. And having done so, I feel that £200 is a fair compensation amount.

Accordingly, while I will be upholding this complaint in Mr A's favour, I'll be doing so only to instruct HSBC to pay this £200 compensation to Mr A. And I won't be issuing any further instructions to HSBC beyond this.

I realise this might not be the outcome Mr A was wanting, but I hope that he'll understand, given what I've explained, why I've made the final decision that I have.

### **Putting things right**

HSBC must make a payment of £200 to Mr A.

### **My final decision**

My final decision is that I uphold this complaint against HSBC UK Bank Plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 July 2024.

Paul Cooper  
**Ombudsman**