

The complaint

Mr P through his representative complains that HSBC UK Bank Plc ignored his pending application for “Breathing Space” relief which would have allowed him to prove his affordability with a view to making a longer plan to clear his mortgage arrears.

What happened

Mr P was in arrears on his mortgage with HSBC and the lender got a possession order on 25 September 2023. It then applied and got an eviction date set for 18 July 2024 and proceeded with the eviction on that date. On the same date, after the eviction, HSBC got notification that Mr P had got temporary protection from his creditors under the Breathing Space (Debt Respite Scheme) to come into effect on the following day. That gave Mr P protection against enforcement for a period of 60 days to allow him to access debt advice and make a plan.

Mr P says that he had been in direct contact with HSBC previously about affordability, but it made more sense for him to get “*Breathing Space*” relief to establish affordability and make a longer-term plan to clear the arrears. Mr P says that as the application on 17 July which he says would have been valid from 18 July was going to be delayed through an administration issue he tried to get through by phone to HSBC and then emailed them. Mr P says that the number on the eviction notice was wrong, and that HSBC didn’t respond to the email. Our investigator didn’t recommend that this complaint should be upheld as the Breathing Space relief wouldn’t start until 19 July, which was the day after the eviction took place, that Mr P should have made more effort to contact HSBC and that in any case there is no evidence that the Breathing Space period would have made any difference. Mr P’s representative disagreed and asked for a review.

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.

The background to the eviction was that Mr P wasn’t making any payments towards the mortgage since July 2022, HSBC got a court order for possession of the property, but Mr P wasn’t in contact with HSBC since that date until 25 June 2024 shortly before the eviction date. Ground rent and service charges were also not being paid. There was contact with HSBC on 25 June 2024. The notes record that Mr P said he was still not working having had issues with getting paid by a previous employer in 2022 but said he got income from working with family. HSBC asked Mr P to complete an income and expenditure form with vouching documentation. Mr P didn’t reply to that with an I/E form but on 17 July at 16.22, Mr P emailed HSBC saying that was unable to get through to HSBC on the number which appeared on the last notice of eviction letter but saying that he had a Breathing Space set up which was expected to be up and running imminently. The actual formal notification was sent to HSBC by email from the Debt Respite Scheme on 18 July 2024 at 7.44pm saying that on 19 July 2024 that the mortgage debt went into Breathing Space which was expected to last until 17 September 2024.

The problem was that the eviction had already occurred on the morning of 18 July before the formal Breathing Space was in place. Mr P's representative makes a number of points including that HSBC should have told Mr P that he could apply for the Breathing Space relief and that HSBC should have delayed the eviction pending receipt of the formal notification that he had got the relief.

I've to decide on the basis of what is fair and reasonable in the circumstances of this case. I recognise that lenders should assist customers in financial difficulties to see if there are solutions that will assist them to remain in the property and that re-possession is a last resort. But this is a two-way street, and I would expect a customer in financial difficulties to engage with its lender on a regular basis so that the lender can consider what assistance it can provide. But for about two years whilst HSBC tried to engage with Mr P, he simply ignored it, both prior and after the court made an order for repossession of the property. When Mr P eventually contacted HSBC it asked him to complete an income/expenditure form as a step to understand his financial situation. Mr P was to come back to HSBC but never did until the evening before the date of eviction. At that stage he made some attempts to contact HSBC to say that a Breathing Space application was pending - I see an email after 4.00pm in the afternoon which wasn't picked up and a call to an incorrect number of HSBC's agents - and the eviction went ahead.

I've to consider whether HSBC did anything wrong. I understand the force of the submission made by Mr P's representative that HSBC should have told Mr P in advance that he could apply for a Breathing Space relief. But that would only make sense if Mr P were engaging with HSBC which would allow HSBC to provide Mr P with the appropriate information and an assessment if he would benefit from that relief. But Mr P has not in any meaningful sense engaged with HSBC since 2022. When Mr P made brief contact with HSBC in June, he was to make further contact with them but didn't. So, given these circumstances as Mr P was not communicating with HSBC, it's difficult for me to say that HSBC was at fault for not providing Mr P with the information appropriate to his situation.

The other issue is that although Mr P made attempts to contact HSBC on the eve of the eviction, it's clear that this information didn't get through to the relevant HSBC department before the eviction went ahead. Mr P appears to have assumed it would although he spoke to no one in HSBC on 17 July and had no confirmation that the message was received and passed on. There appears to have been an incorrect number of HSBC's solicitor on the eviction notice but if Mr P couldn't get through on that number he could have attempted on other numbers. I consider that it would have been reasonable for Mr P to have made every effort to have contacted the relevant HSBC decision maker to see it would agree a delay pending the Breathing Space coming into force. As Mr P didn't get through and the HSBC decision maker was unaware of the pending application and as the Breathing Space relief wasn't in force on the morning of the eviction, I can't fairly hold HSBC at fault for proceeding with the eviction order and I don't uphold his complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 January 2025.

Gerard McManus
Ombudsman