

## **The complaint**

Mr D has complained about how his mortgage has been managed by HSBC UK Bank Plc.

## **What happened**

Mr D has a mortgage with HSBC. Following some financial difficulties a suspended possession order (SPO) was granted in November 2012.

Mr D has two sub-accounts and he says that, whilst he is ahead overall on his arrangement to clear the arrears, the way the payments have been allocated means one sub-account is ahead, but the other is behind.

Due to one sub-account being behind, HSBC has undertaken collections activities such as requesting income and expenditure information and threatening repossession action. Mr D says HSBC has incorrectly told him that the SPO would remain in place until the end of the mortgage term.

An Ombudsman colleague issued a decision on a previous complaint in April 2022. They summarised that complaint as:

‘This complaint’s about a mortgage Mr D holds with HSBC UK Bank plc. Mr D complains that HSBC:

- has denied him access to a lower mortgage rate because he is in arrears; and
- refused a request for a lower rate that he made in August 2020 unless he provided an income and expenditure analysis, a step he considers unnecessary because it is self-evident that lowering the rate will be affordable to him.’

My colleague didn’t uphold the complaint.

Since then, there has been correspondence between the parties. I won’t detail all that here as it is not in dispute and is well known to both sides. Suffice to say HSBC was contacting Mr D about arrears and threatening further legal action, with Mr D saying he was ahead of the set arrangement to clear the arrears.

Unhappy with what had happened and the service he’d received, Mr D raised a complaint. HSBC responded on 22 May 2024, but its response was sent to an e-mail address Mr D no longer used. A further copy of the response was emailed to Mr D’s current e-mail address on the 26 of June 2024.

HSBC said the arrears on one sub-account were completely cleared. It said that it would ensure no further calls would be made to Mr D and it didn’t need the income and expenditure information as he was ahead of schedule in terms of clearing the arrears. It said, however, that arrears letters would still be sent as it had a regulatory obligation to send those. Overall, HSBC apologised and offered £100 compensation to Mr D.

Our Investigator said we wouldn't consider anything that was dealt with in the final decision issued by my Ombudsman colleague in April 2022. She also said it doesn't fall within our remit to comment on the ongoing validity of a court order, saying that would be a matter for the courts to decide. In relation to the points we were considering, she found HSBC's service had fallen short and recommended it pay £350 compensation to Mr D (including the £100 HSBC had already offered).

HSBC accepted our Investigator's assessment and said Mr D should phone it to request the removal of his contact numbers.

Mr D didn't agree with the outcome our Investigator had reached and so the case has been passed to me to decide.

### **What I've decided – and why**

We don't decide every complaint that's referred to us. There are some complaints that we can't look at, because the rules we operate under don't allow us to. And there are others that we are able to look at, but we choose not to due to their circumstances. The rules that set this out are referred to as the Dispute Resolution (DISP) rules and are laid down within the Financial Conduct Authority's handbook.

DISP rule 3.3.4A says 'The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that:

- (5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service.'

DISP rule 3.3.4B says 'Examples of a type of complaint that would otherwise seriously impair the effective operation of the Financial Ombudsman Service may include:

- (3) where the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant).'

I understand Mr D is unhappy with my Ombudsman colleague's decision, saying they "accepted the lies told by HSBC". At some point there must be a conclusion; if we were to routinely revisit cases complaints could run on and on. In my view, this would not be in keeping with our statutory objective to resolve complaints with a minimum of formality and it could also undermine confidence in the entire process thus affecting the effective operation of our service.

For that reason, I won't be revisiting anything that was decided by my Ombudsman colleague in April 2022.

As our Investigator – as well as my Ombudsman colleague – explained, I've no power to interfere with, or comment on the validity of, a court order. My Ombudsman colleague said, in their decision in April 2022:

'I mentioned earlier that Mr D's mortgage is the subject of a long-standing suspended possession order. Mr D has asked that we comment on the notion that the order might now be somehow invalid. That's not something that falls within my remit; the ongoing validity or otherwise of a court order is a matter for the court, and no other body.'

That is still the case, so I'll be making no further comment on whether the SPO is valid until the end of the mortgage term or not.

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

I trust Mr D won't take it as a discourtesy that I've condensed his complaint in the way that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

Mr D has said that HSBC lied about the court order, identifying two things he was told:

- "Another lie told by HSBC to me on numerous occasions was that the court order from 2013 was no longer valid because I had fallen behind with the payment plan. I therefore HAD to fill out an income and expenditure form. I told HSBC on numerous occasions that the court order remained in place until it was discharged or changed by the court. That did not suit HSBC's narrative so it continued to use that falsehood to try to bully me."
- "In the course of that call the operator told me that even when I had paid off the arrears (the court required the arrears to be paid off before the end of the mortgage terms) the possession order would remain in place until the end of the mortgage. I told the woman that was nonsense and invited her to re-consider what she had just told me. She said she was correct about the repossession order and reiterated that notwithstanding being ahead of my repayment schedule the bank may start repossession proceedings."

I can't make a finding on whether those two statements are true. That's because, to make such a finding I would need to first make a finding on the validity (both now and in the future) of the court order and whether it would be discharged once the original arrears are cleared, which as I've explained it isn't in my remit to do.

Mr D has said he knows the true status "Contrary to your assertion, the validity of the court order is not in question. Once arrears are paid the order is discharged. You claim to know that but in order to protect HSBC from its misrepresentation to me, you claim it is not for you to state your knowledge of the position once arrears are paid. It is written on the Order for goodness sake."

As Mr D has identified, if he was given misinformation (which isn't a finding I'm making either way for the reasons already explained) this would be considered a misrepresentation. When we're looking at complaints about misrepresentations, we consider the appropriate remedy is to place the consumer in the position they would be in if the incorrect information hadn't been given. From his own testimony, it seems Mr D is already in the position he would have been in as he has told us he knows the correct information in relation to the court order and so there's nothing further that needs to be done here, even if HSBC did give incorrect information (which, as I've said, I can't make a finding on).

Mr D has said he wants everything in writing; he doesn't want calls from HSBC. Our Investigator felt that was reasonable and recommended that HSBC remove Mr D's contact numbers from its records. Since then, our Investigator has asked Mr D to confirm that he definitely wants his contact numbers removed, aware of the risks of that in that HSBC will be unable to contact him quickly if needed, instead needing to rely on the postal service and the time that takes. I can't see that Mr D has provided that confirmation since then so I would ask Mr D to do that in response to this decision if he wants his contact numbers removed. Without that confirmation from Mr D in response to this decision then we wouldn't ask HSBC to remove them, unless Mr D makes a validated direct request to HSBC at a later date.

I know the final response letter was sent by email, but letters are generally a more secure form of communication than emails. That is demonstrated by the fact Mr D didn't receive the first copy of the final response letter as it was sent to an email address he no longer used. So I don't think I could reasonably direct HSBC that it must send emails to Mr D rather than letters, especially about something as important as arrears on his mortgage that could lead to legal action.

It's not in dispute that whilst Mr D had overpaid his arrangement to repay the arrears on one sub-account, he'd underpaid it on the other. But his overall position was that he was ahead of where he needed to be to repay the arrears once his total payments were considered.

HSBC accepted that was the case in its response to the complaint, saying it would ensure no further collection calls were made to Mr D and offering £100 compensation. It also said that it didn't need income and expenditure information from Mr D, but confirmed arrears letters would still need to be sent.

I agree with our Investigator that it took too long, and too much contact with Mr D, for HSBC to reach that conclusion. It could have been reached a lot sooner and had HSBC done so then Mr D would not have been put to so much unnecessary frustration, distress and inconvenience. I also agree with our Investigator that HSBC took too long to respond to Mr D when he got in touch about a letter he'd received relating to the SPO and HSBC taking action under it. That delay would also have caused additional distress as the mortgage is secured on Mr D's home.

That said, HSBC is correct in saying that it will still need to send arrears letters to Mr D. That's because it has a regulatory responsibility to keep a borrower in arrears updated as to the status of their account, even if there is an arrangement in place to repay those arrears.

Whilst I acknowledge how frustrating it is when a business makes mistakes, mistakes do happen. HSBC has accepted it let Mr D down here and it has apologised for that.

It's not our role to fine or punish a business and our awards aren't punitive. Clearly no amount of compensation can change what has happened. Although I recognise Mr D's strength of feeling I consider the recommendation made by our Investigator of £350 compensation to be fair.

As our Investigator explained, the level of compensation is limited as the underlying problem was that Mr D didn't make his payments in line with the arrangement as whilst he overpaid in total, one sub-account was underpaid which led to the issues. That wasn't HSBC's fault as the underpaid sub-account would flag on its system as being behind schedule, hence moving it into collections and the activity that flows from that. Whilst HSBC should have done more, sooner, once Mr D explained what had happened, I'm satisfied £350 is fair compensation for that.

Mr D has recently told us that HSBC has made further attempts to contact him. I can't comment on that here as I can only consider matters up until the complaint was referred to us. If Mr D is unhappy about any more recent contact then he will need to raise that as a new complaint with HSBC. If he is unhappy with the response he receives from HSBC he can then refer that to us as a new complaint (subject to our usual rules).

### **My final decision**

I uphold this complaint in part and order HSBC UK Bank Plc to pay a total of £350 compensation to Mr D (less any amounts already paid).

I also direct HSBC UK Bank Plc to remove Mr D's contact numbers from its system if, in response to this decision, he confirms his agreement to that. If Mr D doesn't provide that confirmation in his response to this decision – or he doesn't respond – then the numbers can remain on HSBC's system until it receives a direct, validated, request from Mr D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 April 2025.

Julia Meadows

**Ombudsman**