DRN-5304104

The complaint

Ms T complains that HSBC UK Bank Plc trading as first direct bank reported missed payments on her mortgage to her credit file following the breakdown of her relationship. This risked making it difficult for her to take out a new sole mortgage to replace this one.

What happened

Ms T and her former husband took out a joint mortgage with first direct, secured over the family home. They have since separated. Ms T says that she was the victim of economic abuse during the relationship and following their separation. She has obtained non-molestation and occupation orders and continued to live in the property following the separation.

Earlier this year, following divorce and financial proceedings, a court made a financial arrangements order. Among other things, the order said:

- The property should be sold, with the mortgage to be repaid and the remaining equity divided between Ms T and her former husband.
- Pending sale, each party was to pay £400 towards the mortgage each month.
- The mortgage was in arrears at the time of the hearing, and both parties were to be jointly responsible for the arrears.

During the period while the divorce and financial arrangements were being finalised, Ms T was continuing to live in the property. Once proceedings were concluded she placed it on the market. Throughout this time, Ms T's former husband was supposed to be making contributions to the mortgage payments, but didn't always do so. The court had ordered him to make payments on an interim basis pending the final hearing.

During this period, Ms T experienced a period of ill health. She took some time off work for surgery and recovery, but was unable to continue working in her former job. After a period of time out of work, she took another job, but on a part-time basis and at a lower salary.

As a result, Ms T struggled to maintain the mortgage payments. Although generally able to make her agreed share, she was unable to make up the difference in months where her former husband either didn't contribute or didn't pay the full amount agreed.

Ms T took a six month interest only payment arrangement while the property was on the market. The arrangement came to an end before the sale completed, and Ms T asked for it to be extended until the property could be sold. But first direct refused an extension. Following the end of the arrangement, Ms T's former partner continued to contribute an amount based on the interest only payments. The mortgage fell into arrears and the arrears were reported to Ms T's credit file.

After some time on the market, an offer to purchase the property was accepted and the sale began to proceed. Ms T consulted a mortgage broker to apply for a new, smaller, mortgage in her own name, supplementing her share of the proceeds of sale, to buy a new property for her and her children to live in following the sale.

The broker advised her that it might be difficult for her to secure a new mortgage because first direct had recorded arrears on her credit file in respect of the joint mortgage.

Ms T complained to first direct. She said it wasn't fair to record arrears on her credit file. The arrears had arisen because of the breakdown of the relationship and in particular the financial abuse she'd suffered. This included her former husband withholding his share of the mortgage payments despite the court order, even though she believed he could afford to contribute. She said that the arrears markers risked preventing her getting a new mortgage and leaving her homeless, worsening the already serious impact of everything she'd been through.

Our investigator asked first direct to consider removing the arrears markers because of the exceptional circumstances of Ms T's case, but it wasn't willing to do so. However, it did offer to consider an application for a new mortgage from Ms T in her sole name, based on her affordability and the suitability of a new property – setting aside the arrears history in light of what it knew about the circumstances. Ms T decided not to accept that offer, because in the meantime her broker had managed to find her a new mortgage with another lender and she didn't want to continue a relationship with first direct if she could avoid that. She remained unhappy about how it had treated her and that the arrears markers remained on her credit file. She asked for an ombudsman to review her complaint.

My provisional decision

I issued a provisional decision setting out my thoughts on the complaint. I said:

> "I'm very sorry to hear of Ms T's circumstances and everything that she's been through – both her health and the difficulties she's faced leaving an abusive relationship. I'm very pleased to hear that she's recently received an offer of a mortgage from a new lender. I hope that her property sale and purchase has now been able to complete, meaning that she and her children will be able to move on and build a new life. I wish her and her family well in that.
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> Even though Ms T's situation has resolved itself to some extent, though, there are still issues for me to decide in this case. She might have been able to obtain a new mortgage, but the arrears markers remain on her credit file and might have other impacts on her ability to obtain credit and other services in the future. I need to decide whether first direct has acted fairly in recording the arrears, and not removing the record in light of what it now knows about her situation, as well as whether it treated her fairly in the way it dealt with her during the period of arrears leading up to the sale of the property.
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> In thinking about that, I've taken very careful note of everything Ms T has said. I think she was a vulnerable customer, so as well as the general requirements placed on mortgage lenders (including the regulator's Consumer Duty) I've also taken account of the regulator's guidance on the treatment of vulnerable customers. I've also taken account of UK Finance's Financial Abuse Code of Practice – a voluntary industry-wide initiative to which first direct (as part of its parent company HSBC) is a signatory.
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> Ms T and her former husband separated in 2022, and the property was first placed on the market in December 2022, at first without success. A sale was later agreed following the end of the divorce proceedings. Ms T says that she and her former

husband agreed that he would contribute to the mortgage in the meantime (and the court later ordered him to do so, first on an interim then on a final basis), but he often failed to do so or reduced the amount he was contributing. Ms T made up the shortfall herself for a time. But in mid-2023 she had to undergo major surgery and was on a reduced income for several months, losing her job altogether later that year. She's since found another job, but on reduced hours and a lower salary.

From July 2023, first direct agreed a six month switch to interest only to reduce the mortgage payments. This came to an end in January 2024. The property had still not sold by this point and so Ms T asked for the interest only period to continue while she tried to sell it. First direct wouldn't agree to extend the interest only period. It did agree a reduced payment arrangement, but warned Ms T that this would be reported to her credit file. Ms T says she felt she had no choice but to agree to this.

Although the contractual monthly payments had increased back to the full capital repayment amount, her former husband continued to contribute only half of what they would be on interest only. Ms T wasn't able to make up the shortfall herself and the mortgage fell into arrears. From April 2024 Ms T increased her working hours and was able to pay more, and in June she found a buyer for the property. Ms T therefore looked for a new mortgage to help her purchase a new property – using her share of the equity as a deposit – but was advised that because of the recent arrears it would be difficult to arrange.

To help her obtain a new mortgage, Ms T asked first direct to remove the arrears records from her credit file. She said that the arrears were only there because she was a victim of financial abuse, and there was a risk they would have serious consequences for her. She pointed to the UK Finance Code of Practice and guidance from charities in support of what she said.

First direct wouldn't agree to remove the arrears. Following our involvement, it did agree to consider an application from Ms T for a new mortgage in her sole name – based on her affordability but disregarding the arrears history. Fortunately, in the meantime Ms T's broker had managed to persuade another lender to accept an application on the same basis, so this didn't turn out to be necessary. Although Ms T has now secured a mortgage, the arrears markers remain on her credit file and first direct isn't prepared to remove them.

I've thought very carefully about this. There are arguments on both sides. Ms T says that the arrears arose because of the breakdown of her marriage – and, in particular, because of the financial abuse she was subjected to. The arrears, and the arrears reporting, are a result of the abuse. She is not in that situation any more, and to keep the report on her credit file prolongs the impact of the abuse on her. But first direct says that Ms T agreed to pay the mortgage when she took it out, the reports on her credit file accurately reflect how payments were made during the life of the mortgage, and it's important that credit files do accurately reflect the conduct of credit agreements.

Credit files play an important role in the financial services industry. They allow the sharing of information about the conduct of credit agreements – allowing future lenders to take past management of credit into account when making lending decisions. This protects both lenders and customers, by reducing the risk of unsustainable debts being lent.

It's part of the terms and conditions of the mortgage that first direct can share information with credit reference agencies. Information shared must be accurate –

but there's no suggestion in this case that what first direct has shared is not accurate, in that it correctly reported when payments were and were not made to the mortgage. The issue in this case is whether that reporting is fair, taking into account the wider circumstances.

It's important to note that Ms T agreed to the mortgage, and agreed to repay it and be bound by the mortgage agreement. Her circumstances have changed since then – but that doesn't change the fact that she did agree to it in the first place. A mortgage is a very long term commitment, and it's not unusual for circumstances to change for one reason or another over its life. Many people experience financial difficulty during the life of a mortgage because of changes like loss of employment, ill health, and so on. Where those difficulties impact on ability to repay the mortgage, that gets recorded on a credit file.

Ms T experienced a very particular set of circumstances – the breakdown of her marriage in the context of financial abuse. And now those circumstances are behind her, they're not relevant to any future lending applications she might make. But that wasn't the only reason for the arrears in this case; although Ms T was experiencing difficulty keeping up with the mortgage payments, she only actually fell into arrears following her ill health and loss of employment – which wasn't related to the breakdown of the relationship.

While first direct didn't agree to remove the arrears reporting from Ms T's credit file, it did – once we got involved – offer an alternative to help Ms T move forward in agreeing to disregard them when considering a new mortgage application from Ms T. And Ms T's broker was able to persuade a new lender to do similar. So the arrears reporting hasn't ended up preventing Ms T from getting a new mortgage to buy a new property to house her family.

Taking everything into account, I'm not persuaded that first direct has acted unfairly here. The reports it has made are an accurate reflection of the conduct of the mortgage account. They accurately record that neither Ms T nor her former partner, either jointly or individually, was able to make the full monthly payment following the end of the six months interest only period.

In Ms T's case, that was – at least in part – because of a change in her employment situation following a period of ill health. When she took the mortgage out, she agreed to repay it in line with the contract, and agreed that first direct could report whether or not she had done so to the credit reference agencies. It hasn't prevented her moving forward and obtaining a new mortgage. Bearing in mind the purpose and importance of accurate credit reporting, I'm not persuaded – in the particular circumstances of this case – that first direct has acted unfairly. First direct's offer to consider a new mortgage application from Ms T would have been – had it still been needed – a fair resolution to this complaint."

First direct said it accepted my provisional decision. But Ms T did not. She said:

- First direct refused to extend the interest only arrangement after six months – this was the cause of the arrears and the resulting credit file markers.

- Ms T and her former husband were meeting and could have continued to meet the payments on interest only terms. Had first direct agreed a further 10 months, that would have allowed the property to have been sold without arrears.

- The refusal to extend the interest only period was unfair and not justified.

- Ms T also experienced poor customer service – such as having to repeatedly explain her circumstances, and not being given a single point of contact – which also needs to be taken into account.

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.

I've taken into account the further arguments Ms T has made, but I'm afraid I haven't changed my mind.

First direct agreed a switch to interest only terms in July 2023, effective from the beginning of August 2023.

It's important to note that this was not an interest only mortgage, it was a repayment mortgage. That means that Ms T and her former partner were contractually required to pay both the interest and a portion of the capital each month.

Where that's not possible, a lender can enter into a temporary payment arrangement – whereby they collect less than is due each month for an agreed period. This arrangement may include collecting only the interest – treating the mortgage as if it is interest only. But an arrangement does not change the terms of the contract. During the period of an arrangement, the borrower pays less than is due, but because the lender has agreed to allow this, the lender doesn't take further action. That means that, because they are paying less than is due each month, the mortgage falls into arrears – albeit arrears by arrangement.

In July 2023, the government's mortgage charter came into force. Most lenders, including first direct, signed up to the charter and the regulator changed the rules of mortgage regulation to allow the charter's provisions.

One of the provisions in the charter was an option for borrowers to switch to interest only for a maximum of six months to avoid falling into arrears. This is done not by a payment arrangement, but by a variation of the mortgage contract – to change the amount due to just the interest for six months. That means that the borrower continues to pay the full amount due in the interest only period, so the account does not fall into arrears.

However, the rules also say that this can only be done for a maximum of six months.

When Ms T asked for a period on interest only, therefore, first direct acted fairly and reasonably by switching the mortgage to interest only for six months – the maximum allowed under the mortgage charter.

Ms T says that first direct should have extended the interest only period, and had it done so she would not have fallen into arrears and there would have been no impact on her credit file.

But this wouldn't have been possible. Six months is the maximum time a mortgage can be switched to interest only for forbearance reasons. First direct couldn't have switched it to interest only permanently without a full application for a new interest only mortgage, including an affordability assessment and assessment of repayment strategy.

After six months on interest only, the only option – if resuming full repayments isn't possible – is to agree a payment arrangement (rather than a contractual change). But, as I've also explained, a payment arrangement is an agreement to pay less than is due; an agreement to enter into arrears without enforcement action being taken. A payment arrangement is still arrears, and reported as such to a credit file.

There was no way first direct could agree to an extension of the interest only contractual switch, because six months is the maximum. At the end of the six months, first direct did agree a further payment arrangement with Ms T. It wrote to her to confirm the arrangement at the start of February 2024, saying:

> "Things you need to know:
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> - …During this arrangement, your account will also accrue arrears because of the reduction in your monthly payments….
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> - We'll continue to report any outstanding arrears to the credit reference agencies. We'll also report the accrued arrears, and tell them that your account is in an arrangement."

This was correct. There was no way for first direct to extend the six month interest only contract variation, because that was the maximum allowed. The only option was to agree a reduced payment arrangement – which involves the account falling into arrears by arrangement. In agreeing to this, therefore, first direct was not acting unfairly. It did agree to a further period of interest only payments, but there was no way it could do so without reporting that to Ms T's credit file. The only way for Ms T to avoid arrears accruing, or being reported to her credit file, was to pay the full monthly payment – but that wasn't affordable for her. In agreeing a reduced payment arrangement, first direct offered reasonable forbearance within the range of options available.

I've also considered what Ms T has said about the customer service she encountered. I appreciate this was a difficult and upsetting time for her. But first direct did need to keep in regular contact to understand what was happening with the mortgage, whether the payment arrangement was still appropriate, and what was happening with the property sale. I don't think the level of contact was unreasonable. It doesn't generally offer single points of contact, and that's not unfair – not least because it means Ms T's ability to contact first direct isn't restricted to the availability of a single individual. I'm satisfied first direct did its best to support Ms T through a difficult time, within the confines of what it could do to assist.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 10 March 2025.

Simon Pugh
Ombudsman