

The complaint

Mr G's complaint is about a commercial mortgage he has with HSBC UK Bank Plc. He complained that HSBC didn't review his monthly payment when it should have and as a result the mortgage balance has increased because of the addition of unpaid interest, and the monthly payments doubled when a review did eventually take place.

What happened

In 2021 Mr G took out a commercial mortgage of £260,000 over a term of 25 years. Interest was charged at 2.95% over Bank of England base rate. The monthly payments were initially set at £1,240.14 and would be adjusted annually to ensure the mortgage was repaid by the end of the term.

In May 2022 HSBC completed the annual review of the monthly payment and confirmed to Mr G what the new payments would be from June 2022. The payment should then have been reviewed a year later in May 2023, but it was not.

Mr G was issued with a mortgage statement in June 2023. This set out the monthly interest that was being charged and the payment being made. This showed that the February, April and May 2023 payments were less than the amount of interest that was being charged on the mortgage account. That remained the case thereafter.

A request for the monthly payments to be reviewed was submitted through Mr G's relationship manager in January 2024. The relationship manager has confirmed he started as Mr G's relationship manager in May 2023, and the payment being insufficient to cover the interest on the mortgage was not raised as an issue before January 2024. However, the request for the payments to be reviewed does not appear to have been actioned at that time.

Mr G's relationship manager put through another request in May 2024 for the monthly payments to be manually reviewed. This resulted in the monthly payment increasing from £1,363.67, to £2,099.61 from July 2024.

HSBC responded to the complaint in a letter of 14 June 2024. It confirmed that the annual review of the payments was usually done automatically, but this had not happened in May 2023 or May 2024. However, HSBC considered that Mr G had benefitted from this as he had not had to make increased payments and the debit interest had not increased either. HSBC apologised for the error and offered Mr G £350 compensation.

Mr G was not satisfied with the response and referred his complaint to this Service. When he did so in June 2024, he told us that he had been asking for the monthly payment to be reviewed for two years, given the increases to Bank of England base rate, but it was not done. This meant the amount of interest being charged was more than the monthly payment, so the unpaid interest was added to the mortgage balance, and when the review was done, the monthly payment doubled.

One of our Investigators considered the complaint and recommended that it be upheld. He considered the mortgage had been underfunded due to a mistake on HSBC's part and so it

should rework the account as though the payment reviews had taken place and correct payments had been paid throughout. He also recommended that HSBC pay Mr G £500 compensation for the distress and inconvenience he had been caused.

HSBC agreed to pay the £500 compensation and the additional interest that Mr G had paid because of its mistake, due to the mortgage balance being higher. However, it didn't accept that it should pay the interest that would always have been paid or the capital element of the monthly payments that should have been made. It also confirmed if the mortgage was reworked and Mr G paid the capital shortfall amount, the monthly payments going forward would be £1,985.21.

As HSBC didn't accept the Investigator's conclusions, it was decided the complaint should be referred to an Ombudsman.

Upon reviewing the complaint, I asked HSBC to check its records again for contact from Mr G before January 2024. It has done so, including specifically looking for contact with the member of staff Mr G dealt with before his current relationship manager was appointed. The earliest contact it found was in January 2024.

I issued a provisional decision ...

Due to HSBC's mistake, which it has acknowledged, Mr G's mortgage ended up in a position where it was being underfunded. The monthly payment by the early part of 2023 was not even enough to cover the interest that was accruing on the mortgage, let alone repay any capital.

When determining what redress should be awarded to a borrower, we attempt to place them in as close to the financial position they would have been in, but for the error by the financial business. In this case, it is clear that less has been paid to the mortgage than should have been. That was HSBC's fault as it didn't complete the review it should have. As such, it could be viewed that HSBC should pay the shortfall in the monthly payments Mr G should have made.

However, I also need to take into account a borrower's obligation to mitigate any loss they are aware of. In this type of situation, that would mean Mr G taking action when he became aware that the review had not taken place and that he was not paying enough toward the mortgage. Reasonably at that point, Mr G should have begun to set aside funds to provide for the increase to the monthly payments that reasonably he would have known was needed.

I am satisfied that Mr G would have been made aware that he was not paying enough to the mortgage when he received the June 2023 mortgage statement. It showed that at the beginning of the mortgage year he had been being charged around £850 in interest and had been paying just over £1,350 each month. As the year progressed the amount of interest increased and by the spring of 2023 the interest being charged was more than the amount he was paying.

The annual review of the monthly payment should have taken place in May of each year and the new payment applied from June. I think reasonably Mr G would have been aware of this, and the June 2022 annual statement clearly showed the increase to the monthly payment being applied to the account in that month. As such, I am satisfied that Mr G would have been expecting his monthly payment to have been reviewed in May 2023. The fact that it was not, would have been evident from the lack of communication about the review and the monthly payment showing for June 2023, when he received his annual statement, being less than the monthly interest accruing.

As such, I am satisfied that Mr G should reasonably have been aware shortly after receiving the June 2023 annual statement that he was not paying enough to the mortgage. At this point I consider he should, reasonably, have taken action to mitigate that situation, and at the least, setting aside additional funds until the monthly payment to the mortgage was adjusted. Mr G would not have been aware of exactly the amount the payments would have been increased to if the review had taken place in May 2023. However, he could have estimated it based on the amount of interest charged in May 2023 and a sum toward the capital based on the previous review.

As such, I consider that HSBC would, reasonably, only be responsible for the underfunding for June 2023 and the additional interest Mr G paid because the review didn't take place and the mortgage balance was higher than it should have been.

HSBC has confirmed that had the May 2023 review taken place, the monthly payment would have increased to £1,908.91; £545.24 more than Mr G paid in that month. I am currently minded to require HSBC to pay this underpayment for June 2023 only.

HSBC has calculated the additional interest Mr G paid up to September 2024 (when the overdue review was completed) as slightly over £600. It has offered to pay this sum. However, I note that the calculation does not appear to have taken into account the impact of the second review HSBC failed to complete in May 2024.

Despite asking HSBC what would have happened at that review had it taken place, it has not provided that information nor has it confirmed what impact, if any, that review having been completed would have had on the amount of additional interest that has been charged on the mortgage account. I am satisfied that given the interest rate increased several times between June 2023 and May 2024, the monthly payment would have increased again in May 2024. This would have led to more capital being repaid than if the review had not taken place (as per HSBC's calculation) and so slightly more interest being charged.

This matter has clearly caused Mr G some upset and inconvenience. HSBC has already agreed to pay the £500 the Investigator recommended. Having considered the circumstances, I am minded to agree that it is a reasonable and proportionate sum in the circumstances.'

Mr G accepted my conclusions.

HSBC said that it broadly agreed with the provisional decision too. However, it highlighted that the May 2024 review had been completed, and so my statement that it had not been, was wrong. In addition, HSBC was concerned that I had not placed a time limit on how long Mr G had the option to pay the amount of the underfunding.

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 would initially apologise to HSBC for the lack of clarity when I mentioned the May 2024 review in relation to the additional interest calculation. I did not mean that HSBC had not completed a review in May 2024 – indeed I had documented this had been done when I set out the background to the complaint. Rather, I was highlighting that when HSBC had completed its calculation, it had not incorporated a revised May 2024 review into it, based on what the outcome of that review would have been if it had followed on from the May 2023 review results.

I have noted HSBC's concerns about my provisional decision not setting out a timescale for Mr G to make up the shortfall in payments. This is not an unreasonable request. Given the sums involved, I consider that if Mr G wishes to make up the payments during the period of underfunding, he should confirm this to HSBC as soon as he can, and any payment should be made within six months of this decision, assuming Mr G accepts it.

Putting things right

HSBC should:

- rework the mortgage account as though the June 2023 underfunding amount of £545.24 had been credited to the account on 5 June 2023;
- refund to the mortgage account the amount of additional interest charged because it failed to complete the May 2023 review. This will involve a new calculation being completed to include hypothetical reviews in May 2023 and 2024. The calculation should be completed as at the date Mr G accepts my final decision, assuming he does;
- allow Mr G to make a lump sum payment to the mortgage of up to the amount of additional capital that would have been paid from July 2023 to the date of calculation, plus the interest that was added to the mortgage balance. Mr G will have up to six months from the date of this decision to make this payment if he wishes to do so;
- given that the monthly payments are due to be reviewed again in May 2025, I don't propose that HSBC complete a new review before that date, but it should ensure that the annual review is completed on time; and
- pay Mr G £500 compensation for any upset and inconvenience he has suffered due to HSBC's error.

My final decision

My final decision is that I uphold this complaint. I order HSBC UK Bank Plc to settle the complaint as detailed above in 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 17 April 2025.

Derry Baxter
Ombudsman