

complaint

Ms M complains that HSBC Bank Plc won't transfer into her sole name the mortgage that she currently holds jointly with her ex-husband.

background

Ms M and her ex-husband, Mr M, jointly owned a house, subject to a joint mortgage with HSBC. In the divorce settlement the court ordered Mr M to transfer ownership of his share of the house to her, subject to the mortgage, and ordered Ms M to give effect to a charge giving him a one third share of the proceeds of eventual sale. Ms M also undertook to use her best efforts to get Mr M removed from the mortgage.

Ms M applied to HSBC for the mortgage to be transferred to her sole name, but it refused. So she complained. Our adjudicator said that HSBC's decision was a reasonable one based on its view of her finances. Ms M didn't agree, and asked for an ombudsman's decision. She said HSBC's decision wasn't fair and didn't allow her to move on from the marriage. She said that she was paying the mortgage and had been the sole payer throughout. There's plenty of equity, and so little risk to HSBC, which wouldn't be in a worse position than it is now.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm sorry to disappoint Ms M, but I'm afraid that I too don't think that her complaint should be upheld.

I've looked carefully at all the court papers Ms M has provided, and it's clear – as I said above – that the court didn't order HSBC to remove Mr M from the mortgage. It merely noted that Ms M agreed to try to have him removed. She has tried, and even though unsuccessful to that extent she's done what she agreed to under the order.

But HSBC isn't obliged to agree to the request. What it is being asked to do is to move from a situation where it has two borrowers, each jointly and severally liable, to a situation where it has one. That increases its risk.

In deciding whether to make any changes to a mortgage, HSBC must take into account the rules of mortgage regulation. Among other things, the rules say that a lender must check that a loan is affordable to the borrower. I know that Ms M says that she is currently paying the loan herself, but that isn't the same as affordability. To assess affordability, a lender must look at whether a borrower could afford the loan now and in the future, taking into account things like future interest rate rises.

In considering her application, HSBC noted that Ms M's income included a large element of overtime. It also noted that she had recently been in difficulties on other borrowing, and had for a time during the marital dispute stopped paying the mortgage.

A borrower's income, including how much of it is non-guaranteed, and a borrower's credit history are both legitimate things for a lender to take into account. Having looked at all the circumstances, I don't think that HSBC's decision to refuse to transfer the mortgage to Ms M's sole name was unreasonable.

my final decision

For the reasons I've given, 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 M to accept or reject my decision before 4 January 2016.

Simon Pugh
ombudsman