

## **complaint**

Mr U1 has complained that HSBC Bank Plc appointed a Law of Property Act (LPA) receiver when he had a buyer in place.

Mr U2, his brother, represents him under a power of attorney. However, to make this decision easier to read, I will refer only to Mr U1.

## **background**

Mr U1 took out two loans with HSBC, which were secured on his business properties. He agreed with HSBC that he would use the rental income from the properties to cover the loan repayments and the interest.

However, he stopped paying the rental income into his account from January 2010. And he stopped making the repayments.

HSBC said it wrote to him throughout 2014 and 2015 warning him it would take formal steps to recover the debt. In 2014, it carried out a valuation of the properties.

By 2016, he was in serious financial difficulties. He owed HSBC over £900,000. This sum included an overdraft of £33,270. Unfortunately, the properties he owned had also fallen in value, leaving a shortfall. In January 2016, HSBC agreed he could sell his properties but it stipulated that he had to exchange contracts on both properties by 9 July 2016. In return, it agreed to write off any shortfall.

Nothing happened. The deadline for exchange of contracts passed. HSBC asked him to get in touch but he didn't respond.

It wrote to him again in September. It told him if he didn't place the properties on the market by 5 October, then it would issue a formal demand for payment and appoint a receiver. Still nothing happened. On 7 October, it issued a formal demand for payment and advised him it was going to appoint a receiver.

Mr U1 contacted the bank and subsequently met with the regional manager. He also held several telephone conversations with him. HSBC agreed he could sell both properties to a buyer he'd found, Mr G, for £495,000. Mr G confirmed that he could fund the purchase. He also said he expected completion to take place within 8 – 12 weeks. Mr U1 instructed solicitors to handle the sale. HSBC agreed to write off any remaining debt. It confirmed the arrangements in a letter dated 2 December 2016.

Unfortunately, the sale to Mr G fell through but Mr U1 found another buyer. It was now April 2017. The new buyer offered a lower price of £450,000 for the two properties. HSBC agreed to the lower price but stipulated that the sale had to be completed by 18 October 2017. It said it would withdraw its agreement to the sale if completion didn't happen by this date. And it warned him that if the sale didn't progress as expected, it would appoint a receiver. Mr U1 told HSBC the buyer had paid a non-refundable deposit to his solicitor as a gesture of goodwill. But the solicitor didn't confirm this with HSBC.

HSBC confirmed the terms of the revised settlement in letters dated 6 and 22 September.

The sale didn't progress as expected and Mr U1 missed the deadline for completion. HSBC issued another formal demand for payment on 31 October. In a separate telephone call on the same day, it gave him until 14 November to exchange contracts. But Mr U1 missed the deadline again.

On 24 November, HSBC called Mr U1 advising him it was appointing a receiver with immediate effect. The buyer's mortgage offer came through on 30 November.

Mr U1 didn't think it was fair of HSBC to appoint a receiver when he already had a buyer in place. He asked HSBC to stop the appointment and let him sell the properties to his buyer. It said it couldn't reverse the appointment but in any case, it had acted correctly when it appointed the receiver. It said it had given him sufficient time to clear his debt and had repeatedly told him it would appoint a receiver if he didn't comply with its conditions.

Mr U1 wasn't happy with this response so he brought his complaint to this service. He also said HSBC harassed him and put him under pressure to sell.

Our adjudicator thought HSBC had acted fairly and reasonably in the circumstances. He said it had allowed Mr U1 sufficient time to clear his debt or sell the properties. He pointed out that the original agreement to sell the properties was reached in March 2016 but he still hadn't exchanged contracts by November 2017. And he found that HSBC had given him ample warning it would appoint a receiver. He didn't ask HSBC to do anything more.

Mr U1 disagreed with our adjudicator's view. He's asked for an ombudsman's final decision.

### **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 appreciate Mr U1 feels strongly that he's been treated unfairly by HSBC. He was in talks with the bank about a way forward. More than that, he had a buyer in place. Yet it chose to appoint a receiver. I understand why he's upset.

But I have to consider whether HSBC's decision to appoint the receiver was fair and reasonable in the circumstances. I'm afraid I think it was. It had good reasons for appointing the receiver; it kept him informed about what it was doing and it allowed him enough time to settle his debts before appointing the receiver.

By November 2017, Mr U1 owed £988,404. This sum included loan arrears of £558,000. He'd stopped using the rental income for the repayments, even though he'd agreed with HSBC that he would do this. I believe I can safely say he was in serious financial difficulties.

To make matters worse, his properties, which he had offered as security for the loans, had fallen in value. I think HSBC would have been concerned by this. It meant the proceeds from any sale wouldn't be enough to clear the debt.

And so the situation was that Mr U1 owed HSBC a large debt. I consider it had good reasons for its decision to appoint a receiver and was entitled to take these steps to recover the debt.

I have read HSBC's letters to him. I can see it kept him fully informed of its intentions during 2016 and 2017. The letters explain the bank's concerns about his business and the steps it would need to take to recover the debt if he couldn't settle it. The letters also advise him to get legal advice. By contrast, it said he had a long history of not co-operating with it.

I'm sorry if he felt harassed by the letters and under pressure to sell the properties but I don't think the letters were harassing. HSBC couldn't ask him informally to repay the debt. It had to follow a process. And it had to tell him in advance if it was going to appoint a receiver. It acted in line with industry practice and guidance. I think it would have been unfair on him if it hadn't sent him formal letters before taking these steps.

I also think HSBC gave Mr U1 the opportunity to settle his debt before taking any action.

It seems Mr U1's financial difficulties started in January 2010. That's when he stopped making the repayments. By 2014, HSBC was concerned by the arrears, overdraft and the falling value of its security. It said it wrote several letters in 2014 and 2015, asking him how he planned to settle the debt but he didn't respond. His brother took charge and began negotiations for the sale of the properties in March 2016.

Unfortunately, one sale had to be aborted. That wasn't his fault. Despite this, HSBC allowed him to proceed with another buyer. But by November 2017, he still hadn't completed a sale, even after giving him extra time. And it didn't know if the buyer had paid a deposit.

I think HSBC gave him ample time to try to clear his debt and sell his properties, based on this information. And with no completion date in sight by November 2017, I think it was reasonable for it to decide the time had come to appoint a receiver.

I understand he would have preferred to keep the properties and pay off the debt with the rental income. HSBC didn't have to agree to this proposal and given his history, I can see why it would refuse.

I realise when Mr U1 first complained to this service, he was upset that the receiver didn't sell the properties to his buyer. I'm afraid I can't consider the receiver's conduct because this isn't regulated by the Financial Conduct Authority. However, I understand that one of the properties was eventually sold at auction to his buyer.

To conclude, and based on the evidence I've seen, I consider that HSBC's decision to appoint the receiver was fair and reasonable in the circumstances.

I'm sorry this will be disappointing news for Mr U1 but I hope the reasons for my decision are clear.

### **my final decision**

My final decision is that I won't be asking HSBC Bank Plc to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U1 to accept or reject my decision before 5 August 2018.

Razia Karim  
**ombudsman**