

complaint

Mr N complains that HSBC UK Bank Plc intentionally cancelled his direct debit repayments of his personal loan, and then defaulted the loan, while he wished to keep making payments.

background

Mr N had a personal loan and a mortgage, both with HSBC. His monthly repayments were about £181 on the loan, and over £2,480 on the mortgage. To start with, this represented about one third of his income. But he was made redundant, and for a few months he made his repayments from his savings while he looked for a new job. When his savings ran out, he contacted HSBC's mortgage department to come to an arrangement.

HSBC agreed to accept underpayments on the mortgage for a while. Later on, HSBC and Mr N agreed that Mr N would sell his home. In the meantime, HSBC would continue to accept reduced monthly repayments. When his home was sold, the proceeds of the sale would pay off both debts in full.

While this had been going on, Mr N had still been making his contractual repayments on the loan, by direct debit. But in early 2018, another department of HSBC (unsecured lending) decided that Mr N could no longer afford the loan, on the ground that he couldn't afford to make his full mortgage payments. So HSBC cancelled his direct debit, and the loan account fell into arrears. Mr N complains about this decision, since he had been making his loan repayments and still wanted to keep making them. He said he had come to an agreement with the mortgage department – one which would result in the loan being paid in full – and there was no reason for another department to interfere. Stopping his loan repayments would only extend his financial problems to a second front, and damage his credit rating.

HSBC told Mr N that he could still make manual payments towards the loan. But he says the bank also told him that these would not be recorded on his credit file, because they would be treated as overpayments, not payments falling due. So he didn't make manual payments. After six months of arrears, HSBC defaulted the loan. Mr N complains about the default. He says this has caused more damage to his credit rating than the arrangement to pay on the mortgage. He says estate agents have advised him that this will make it difficult or impossible for him to rent a new home, and so he and his family may become homeless. He says he should have been allowed to keep making the loan payments as before. He wants the default to be removed and the loan to be reinstated until the house is sold.

Unfortunately, as soon as the house was put on the market, a boundary dispute arose, and it had to be taken off the market until this could be resolved. This dispute has led to litigation, delaying the sale. HSBC clearly has confidence in Mr N's case, because its insurance department has underwritten his claim. But in the meantime, the arrears on the mortgage continue to grow.

HSBC says it has done nothing wrong. It says a customer should give priority to a secured debt over an unsecured debt, and therefore anyone who can't afford to make his mortgage payments clearly can't afford an unsecured loan. The money Mr N had been paying towards his loan should have been used to reduce his mortgage arrears instead, since his home was at risk.

Mr N accepted that all of that was true, in normal circumstances. But he said this was a special case. He pointed out that he was already trying to sell his home, so it hardly made

sense to describe it as “at risk.” He and HSBC had agreed a way forward which would result in both debts being settled in full, and so there was no benefit to either party in defaulting the loan. He brought this complaint to our Service.

Our investigator did not uphold this complaint. He said that HSBC had followed normal banking practice. Mr N said that HSBC had had no right to refuse to accept his loan payments, and that by doing so the bank had put him in an untenable position. He said one department of the bank should not interfere in what another department had agreed with its customer. He asked for an ombudsman’s decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I would normally agree completely with the proposition that a customer should prioritise his mortgage over an unsecured debt. The reasons for this are self-evident. So a lender would not usually be at fault by encouraging its customer to focus all his efforts on repaying a mortgage, instead of diverting money elsewhere.

But I agree with Mr N that his case is potentially different. He had a plan to pay off both debts by selling his home, and HSBC had agreed that this was an acceptable solution. In those circumstances, telling him to stop making loan repayments, and eventually defaulting the loan, would certainly not have been treating him fairly. The usual argument that the customer’s home was at risk of being repossessed in the course of foreclosure would not apply. Instead, the bank’s actions would not be protecting his position, but making it worse.

However, I think that the sequence of events undermines Mr N’s argument. When he first contacted HSBC’s mortgage department about his predicament, he didn’t immediately suggest selling his home and using the proceeds to clear his debts. Rather, he started by asking to make reduced payments. That was in March 2018.

Then in May 2018, he asked to re-mortgage. He wanted his wife to be added to the mortgage, to enable the mortgage term to be extended (because the term could not otherwise be extended, on account of his age). He would pay off the mortgage arrears using the income from his new job. Unfortunately, HSBC did not think that his income from the new job would be enough to agree to this plan. It also said that he would need to have a permanent job, and at the time his new job was only a six month contract. Since Mr N expected to be offered a permanent contract in a couple of months’ time, it was agreed that he would continue to make underpayments until then.

HSBC’s call notes record that the bank asked Mr N what he would do if he didn’t get the permanent job. He said he wasn’t sure, but he would potentially sell the house, but he didn’t want to. That is the first mention in the bank’s records about selling the house, and in May 2018 it was not yet an agreed plan, but just an idea for a contingency plan.

In July the position was reviewed. Mr N was not ready to remortgage yet, but a further underpayment was authorised for August.

An internal memo in August states that even if Mr N did get the permanent role, he would still not be able to re-mortgage while his account was in arrears. It would therefore be necessary to focus on his arrears. Later that month, Mr N said he still wanted to re-mortgage

along the lines discussed earlier, or alternatively to change to an interest-only mortgage. But this proved not to be possible after all.

The earliest mention of a definite plan to sell the house, once re-mortgaging had been ruled out, was on 24 September 2018. However, the decision to stop his direct debit loan repayments had been made in March 2018, and the default notice was served in August, before the August phone call I described above.

Mr N disputes this chronology. He says he put his house on the market in 2017, and that is also when the boundary dispute began. But the first mention in the bank's records of him deciding to put the house on the market is in September 2018, and the first mention about the boundary dispute was on 8 October. That entry seems to describe the dispute as having only just begun. But even if this really did happen in 2017, that wouldn't help Mr N's case, because he didn't tell the bank he was selling the house until nearly a year later. The key point here is that when HSBC decided to make him prioritise the mortgage over the loan, there was as yet no agreement that he was going to sell the house. Therefore HSBC's assessment that his house was at risk was rational. At that time, it was necessary for Mr N to clear his mortgage arrears somehow, before it would be possible to refinance his mortgage. And so paying £181 a month towards another debt would have been counter-productive.

For these reasons, I am not persuaded that HSBC acted unfairly to Mr N or that it failed to have due regard to his interests. Its response was within the range of reasonable responses to his situation, and was a legitimate exercise of the bank's commercial judgement.

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N to accept or reject my decision before 3 September 2020.

Richard Wood
ombudsman