

Complaint

Mr H complains that he fell victim to a rogue trader scam, but HSBC UK Bank Plc won't reimburse him.

Background

In January 2021, Mr H needed repairs to be carried out in his home. He'd noticed a leak in his bathroom ceiling and so he consulted a popular online directory of tradespeople. He contacted three potential contractors. Two of them either didn't provide him with a quote or weren't able to start work quickly.

One company did provide a quote. Mr H read the reviews other customers had posted about this contractor and was generally happy with what he read. He hired that company to carry out the repairs. They visited his home and told him they would carry out the repairs at a cost of £150. However, according to Mr H, the price of the works escalated significantly and very quickly. This was apparently justified by the contractors finding that there was more extensive damage to his home than he'd first realised. For example, they told him that the timbers supporting the roof structure were wet and needed to be replaced. From the invoices that Mr H has shared with us, the contractors increased the cost of the works from an initial £150 to £40,000 within a matter of days.

Mr H told a neighbour what was going on. His neighbour said that he knew a trustworthy roofer who could give him a second opinion. The second roofer came and inspected Mr H's property and was concerned by what he saw. He told Mr H that the work that had already been completed had been carried out to a very low standard and suggested the contractors he'd hired didn't have the skills for the job.

Mr H cancelled his contract with the original contractor and hired the second contractor to repair the damage. By that point, he had already transferred around £30,000 to the original contractor. The second contractor told our Investigator that most of the work that had been carried out was unnecessary. He said that the wrong insulation materials had been used and that slates had been incorrectly installed. He said there were more holes in the roof when they left than there had been originally.

Mr H complained to HSBC that he'd fallen victim to a scam. HSBC said that it thought he had a civil dispute with the roofer, but that he wasn't the victim of fraud. That meant it didn't have any obligation to reimburse him.

It said that the company Mr H had paid was a genuine limited company and the contractors had commenced work. It thought these were indicators that this wasn't a scam. It also said that the company had a profile on a third-party directory. That website has a thorough vetting process. They would've needed to provide evidence that they were qualified to carry out the works that they were offering their services in connection with. They'd also need to provide evidence that they had public indemnity insurance. HSBC thought it was highly unlikely that a fraudster would've been able to get over these hurdles in order to be placed on that particular website, let alone manage to obtain positive reviews in connection with other jobs.

Mr H disagreed with HSBC's conclusion and so he referred a complaint to this service. It was looked at by an Investigator who upheld it. The Investigator identified several irregularities with the company's registration at Companies House and the paperwork it supplied to Mr H at the time. He also considered that the contractor's actions were similar to those of a typical rogue trader scam.

HSBC disagreed with the Investigator's opinion and so the complaint was passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so I have taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I issued a provisional decision on this complaint on 28 February 2023. I wrote:

There's no dispute here that Mr H authorised the payments to the company. Under the relevant legislation, that means he's liable for those payments at first instance. However, HSBC was under a range of other duties and obligations at the time. Broadly summarised, it was expected to be on the lookout for payments that were unusual or out of character with the aim of preventing customers from falling victim to fraud and scams. It's also a signatory to the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. In certain circumstances, that code can entitle a customer to be reimbursed by the bank after they've fallen victim to a scam.

However, before I consider whether any of those obligations come into play, I must first consider whether Mr H is a victim of fraud. The CRM code is explicit that it doesn't apply to "private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services ... but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

This isn't a straightforward question to address. To be satisfied that Mr H fell victim to fraud, I'd need to be persuaded that the contractors he hired had a settled intention to scam him. Obviously, I cannot know what was in the minds of the contractors at the time they agreed to carry out these repairs. As a result, I must infer what their intentions were based on what the available evidence tells me.

Unfortunately, I'm not convinced that the evidence shows that Mr H was the victim of a scam. I've come to that conclusion for several reasons.

HSBC's argument about the vetting that takes place on the third-party website is a persuasive one. This company was able to demonstrate to the website's staff that its

workers were qualified to the required standard and that an insurance company had provided it with public indemnity insurance. I think it's unlikely that a rogue trader would've been able to do these things.

It's not clear from Mr H's explanation how this went from a £150 job to a £40,000 one. I can see from the email communications he had with the contractor that the first increase in price was at his request, rather than at the suggestion of the contractor. The first invoice didn't include all the work that Mr H wanted to be carried out and so

a second invoice was issued. The earliest invoices included a clear itemisation of what work was to be carried out. However, although I've seen a document saying that Mr H was being invoiced for £40,000, that itemisation doesn't appear to be available anymore, so it's difficult to know for sure exactly what he agreed.

The contractor's bank provided us with quite a lot of information about the operation of their account. The activity on that account is consistent with a legitimate roofing company. There is an indication that the contractors bought materials that were relevant to the work on Mr H's home. For example, Mr H says he was told that the timbers in his roof had suffered water damage and needed to be replaced. The following day, the account was used to make a purchase at a timber supplier close to Mr H's home.

There are also payments made into the account for several months with references that clearly suggest they're payments for roof repairs or similar work. The contractors clearly continued to tout for business in this field on an ongoing basis. It's significant that none of these other clients have made a similar allegation of fraud. That isn't what I'd expect from the typical rogue trader.

I've considered the comments shared with us by the second contractor who eventually completed the job. These comments suggest that the quality of the work by the original contractors was of an exceptionally low standard. However, I'm mindful of the fact that he's told us things that he can't know for sure. For example, the second contractor told us that there were more holes in Mr H's roof after the initial contractors left than before they started. But it's not clear to me how he could've known this without having had the opportunity to inspect the roof beforehand. It seems to me that the bulk of his commentary concerns the quality of the work carried out and the skill level of the individuals that did so. There's little doubt that, based on this testimony, the contractors Mr H hired were substandard. However, that doesn't necessarily mean that they committed fraud.

I did consider the fact that £40,000 would be an exceptionally high price if the work was limited to replacing the existing roof. That could be an indication that the contractors weren't acting in good faith. However, I'm not convinced I can uphold Mr H's complaint simply because the price he was quoted was significantly out of line with the standard market price.

Fundamentally, HSBC doesn't have any duty or obligation to intervene in payments that are legitimate or to protect customers from the impact of a bad deal. I don't say any of this to downplay or diminish what Mr H has been through which must have been exceptionally difficult. I sympathise with him for that and I know he will be hugely disappointed by my decision. However, having considered all the available evidence and arguments, I'm not persuaded HSBC can fairly be held liable for his losses in these circumstances.

Mr H disagreed with my provisional findings. In summary, he said that:

- When he cancelled the job, the contractors left a hole in his bathroom ceiling out of spite.
- The company's manner of operating was consistent with that of rogue trader scams – i.e. to commence work on the basis of a small quotation and then escalate it quickly. He thinks that he was targeted because of his age and the fact that he lived alone.

- The roofing company had three different addresses, which should be regarded as suspicious. It was also dissolved just a few months after this dispute.
- His legal advisors found a newspaper article showing that one of the directors of the company had a prior conviction for carrying out a series of rogue trader scams.
- The third-party website isn't a reliable source of evidence. Positive reviews shouldn't be trusted because it's easy to fake them.

I've considered these points carefully. However, I'm afraid I'm not persuaded to depart from the position I set out in my provisional decision. I'll explain my reasons why.

Mr H says that, when he cancelled the job, the contractors damaged his home out of spite. Unfortunately, there's no other evidence to support this claim. However, some of the arguments Mr H has made are well founded. For example, I accept that the facts of this case, as Mr H describes them, match those of a commonly occurring type of rogue trader scam and that Mr H has the same profile as a typical victim of such a scam. However, that similarity alone wouldn't be enough to say that it's more likely than not that he fell victim to a scam here. I need to consider that fact in the light of all the other available evidence.

Mr H says that the company had three different addresses, which should be regarded as suspicious. However, I'm not persuaded that there is any reasonable basis for suspicion here. According to the Companies House entry, it has had two official addresses. The first is that of an independent third party that is used by lots of small businesses to register companies. That company held the registration temporarily before transferring it to the directors.

The entry then showed that the company's registered address was a location in the home counties, whereas the invoices that were issued to Mr H suggested the company was operating from an address in London. There are several innocent explanations for this difference – the contractors may have operated from more than one location or they might have relocated but simply not updated the records. Certainly, there's nothing to suggest that any effort was made to conceal the genuine correspondence address of the limited company. If Mr H or any of its customers wanted to serve notice of a legal claim, they would've been able to do so.

I've considered the various news articles that Mr H's legal advisors found online. However, it's speculative to say that there's any connection between the rogue traders described in those articles and the ones who visited Mr H's home. One of them talks about an individual who was convicted several years ago of carrying out scams that targeted elderly homeowners. However, it seems unlikely that it was the same person. The only connection I can see is that the director of the roofing company that Mr H hired has the same surname. The individual described in that news article was older, lived in and carried out his crimes in a different region of the country and did so using fake names. Although I understand Mr H's suspicions that there might be a link between these people, I'm not persuaded there's any evidence to suggest there is.

Mr H has said that the information on the third-party website isn't reliable. He's pointed out that it's possible for reviews contained on it to be faked. Nonetheless, I think the process for obtaining a registration looks to have been reasonably robust and it would've required the contractors to have obtained insurance for their activities. I think it's unlikely that a rogue trader would've been able to meet those requirements.

While I can understand Mr H's position, I still don't think there's strong enough evidence that this was a scam, rather than simply a dispute with an incompetent and perhaps

unprofessional contractor. In particular, the information on the company's account does clearly show them receiving payments for various types of work, including roof repairs. It seems highly unlikely that, if these contractors were fraudsters, that he would've been their only victim to have notified their own bank.

Overall, while I know that this will be a hugely disappointing outcome to Mr H, I remain of the view set out in my provisional decision that HSBC cannot be fairly held responsible for his losses here.

Final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 April 2023.

James Kimmitt
Ombudsman