

The complaint

Mr J and Ms P complain that HSBC UK Bank Plc ('HSBC') won't refund the money they lost after falling victim to a scam.

What happened

In February 2022, Mr J and Ms P wanted to make changes to their kitchen and found a company online who I'll refer to as T. In March a representative of T came to Mr J and Ms P's home and discussed what work they wanted to be completed. A few weeks later they received an invoice from T.

Ultimately Mr J and Ms P contracted T to do the work, and as per their contract they paid two deposits upfront. The first payment was made in April 2022 for £11,309.61 and the second payment was made in May 2022 for £9,047.64.

Mr J and Ms P were told that the kitchen and appliances had been ordered and work was due to start at the end of May 2022. Following some discussions, it was agreed to move the start date to July 2022. However, no work was ever completed, and no materials or appliances were provided to Mr J and Ms P.

In June 2022, Mr J and Ms P were told that T was appointing liquidators and they would be given the contact details. No details were given and contact with T's representative stopped in July 2022. At this point, Mr J and Ms P raised a fraud claim with HSBC.

HSBC are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) and considered the claim under the code. But HSBC deemed the matter to be a civil dispute between the parties – not a scam. As such, HSBC declined to refund Mr J and Ms P the money they'd lost.

Mr J and Ms P weren't happy with HSBC's response, so they brought a complaint to our service.

An investigator looked into Mr J and Ms P's complaint and didn't uphold it. The investigator explained that based on the evidence we had, it was more likely than not a civil dispute and therefore not covered by the CRM Code.

Mr J and Ms P disagreed with the investigator's opinion and raised the following points:

- T said they were going into liquidation, but Mr J and Ms P don't believe they have – which shows deceit on T's part.
- In July 2022, T's website and all social media platforms were taken down.
- Mr J and Ms P were told that the kitchen had been ordered from the supplier, but the supplier said no order was placed.
- Trading standards say it's a scam.

Mr J and Ms P asked for an ombudsman to review their case.

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.

In broad terms, the starting position in law is that HSBC are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

However, HSBC are a signatory of the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances. However, the CRM Code does not apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

The CRM Code defines what is considered an APP scam and this includes where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.

So, I can only apply the CRM Code to Mr J and Ms P's payments or consider HSBC's liability to them under the CRM Code, if I'm satisfied that the payments were made as part of an APP scam. As opposed to a situation where T didn't fulfil the contract with Mr J and Ms P due to, for example, the business failing, which would be considered a civil dispute not covered by the CRM Code.

I've carefully considered all the reasons that Mr J and Ms P believe they were the victims of an APP scam, however I'm not satisfied that I can safely reach that conclusion. I'll explain why.

I appreciate that T didn't complete the work they were contracted to do, however that isn't enough to say that T set out with the intention to defraud Mr J and Ms P from the outset.

From what I've seen, and what Mr J and Ms P have told us, T was a genuine company incorporated two years prior to agreeing to do the work for Mr J and Ms P. They filed their financial accounts up to May 2022 with Companies House, were included in many online directories and had a website and social media presence. This suggests that they were trading legitimately for a substantial period of time prior to Mr J and Ms P making a payment.

I've seen third party information from T's bank, which indicates that T was operating as a legitimate business up to and during the time Mr J and Ms P made their payments. Also, that bank didn't have any concerns about the operation of T's account.

I appreciate that Mr J and Ms P believe that T was dishonest with them saying: the kitchen was never ordered from the supplier, T stopped communicating with them, they were told T was going into liquidation but not supplied with liquidator details. I'm also aware that Trading Standards have told Mr J and Ms P that they believe T committed fraud under the Fraud Act in relation to sections 1 and 2 – by committing unfair trading. However, this isn't enough to say that at the time T took the payments they never had any intention of completing the work or set out with the intention to defraud Mr J and Ms P.

I accept that T may've been dishonest and hasn't completed any agreed work as per the contract they had with Mr J and Ms P. However, based on the evidence I've seen, I think it's more likely than not at the time T took Mr J and Ms P's money, T were acting and operating as a legitimate company and that T took the money with the intention to complete the work.

It's highly possible that T may've been experiencing financial difficulties and was taking on new jobs in order to complete old jobs and trying to trade out of those difficulties. But dishonesty and the business failing constitutes a civil dispute and doesn't meet the bar to be considered an APP scam, which means I can't hold HSBC liable under the CRM Code.

I know that Trading Standards have told Mr J and Ms P they were scammed, however this doesn't mean that their situation meets the definition of an APP scam which is the standard that has to be met in order for me to consider their loss under the CRM Code.

I've also thought about whether HSBC could've prevented Mr J and Ms P's loss when they made the payments as there is an obligation on HSBC to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect HSBC to intervene and attempt to prevent losses for the customer.

But, even if HSBC had intervened, it wouldn't have made a difference in this case. I say this based on all the information that Mr J and Ms P had the time they made the payments. I think any questions HSBC could've asked if they had intervened, would've suggested that Mr J and Ms P were dealing with a legitimate business. So, I'm not satisfied that HSBC missed an opportunity to intervene and prevent Mr J and Ms P's loss or that they acted unreasonably in following Mr J and Ms P's payment instructions.

I'm really sorry that Mr J and Ms P have lost so much money, and to hear about the impact this loss has had on them. But having carefully considered everything, I can't fairly ask HSBC to refund them.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Ms P to accept or reject my decision before 20 February 2024.

Lisa Lowe
Ombudsman