

The complaint

Mrs D complains that HSBC UK Bank Plc (“HSBC”) won’t refund money she lost after falling victim to a scam.

What happened

In 2022, Mrs D wanted to have some building work completed on her home. Mrs D says she’d already received quotes and was drawing up plans when she received a letter from K asking if she was interested in having building work completed.

K and his partner attended her property and gave her a quote, which Mrs D says was the cheapest she’d received. K’s quote set out the cost for the work as £190,000 (excluding VAT), said the work would take approximately 22 weeks to complete from the agreed start date and broke down the payment into eight stages of completion.

As part of her checks on K and his company, Mrs D looked at their website which she says looked legitimate. She also read reviews and says they were positive, with only one negative review in relation to drainage work. K told her that they replaced the drains in that case. K also referred her to two satisfied customers and suggested Mrs D go and view the work done on their properties, saying the customers were happy to talk to Mrs D. Mrs D says they both gave a positive review of K and the work he’d done.

Mrs D engaged K to complete the work and made her first payment on 25 March 2022 for £25,000, being part of the deposit payable - as set out in the contract. The total deposit payable was £30,000 and Mrs D made this over two payments. Below are all the payments Mrs D made as part of her contract with K.

Date of payment	Payee and invoice description	Amount of payment
25 March 2022	K - deposit	£25,000
28 March 2022	K - deposit	£ 5,000
6 May 2022	K – stage 1 foundation	£20,000
9 May 2022	K – stage 1 foundation	£ 5,000
30 May 2022	K – stage 2 drainage	£15,000
1 June 2022	K – stage 2 drainage	£10,000
	Total payments made	£80,000

Mrs D says that after receiving the last payment of £10,000 in June 2022, K took all the building materials off the site and didn’t return to complete the work. She’s also unhappy with the quality of the work that was completed, saying removal of the chimney left a hole in the roof she had to get fixed. Mrs D says her family had to move into a rental property while the work was being completed on their home and they’ve been left with an uninhabitable property and no money to complete the outstanding work.

Mrs D contacted HSBC at the end of June 2022, when she was unable to get in touch with K. HSBC raised a fraud claim for Mrs D but declined to refund her, saying they considered the matter to be a civil dispute between her and K.

Mrs D wasn't happy with HSBC's response, so she brought a complaint to our service.

An investigator looked into Mrs D's complaint but didn't uphold it. On balance, the investigator thought it was most likely K was operating as a genuine business and felt Mrs D's payments were part of a civil dispute with K – as opposed to being part of a scam – so they couldn't hold HSBC liable for her loss.

Mrs D disagreed with the investigator's opinion saying:

- There were other people who also used K's services who were dissatisfied. She provided messages from those third parties, including one which said that K's work had to be removed as it was deemed unsafe and didn't meet the building regulations.
- She had concerns over the people K hired to do the work.
- Concerns were also voiced by an employee that was brought in to oversee the work.

As the case couldn't be resolved, it was passed to me to review.

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.

HSBC are a signatory of the Lending Standards Boards Contingent Reimbursement Model Code (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.

So, I can only apply the CRM Code to Mrs D's payments or consider HSBC's liability to her under the CRM Code, if I'm satisfied that the payments were made as part of a scam. As opposed to a situation where K didn't fulfil the contract with Mrs D due to, for example, his business failing, which would be considered a civil dispute and not be covered the Code.

Is HSBC required to refund Mrs D under the CRM Code?

I can see that K's business was incorporated and registered with Companies House in 2019. In August 2022 they went into voluntary liquidation with a liquidator appointed. Based on the information available, it appears they were trading until some time in 2022.

Mrs D raised a complaint with the police and has given us some of the emails she's exchanged with them. One of these emails says the police concluded that K's bank transactions correspond to what he claims to have spent on business expenses, both to pay wages and buy materials. Mrs D has told us that she believes the police's comments related to K's personal account and not the business account she sent her payments to. However, we've had confidential information provided by K's bank which mirrors what the police have said, and this information relates to the account Mrs D made her payments to. I haven't seen anything in that information that suggests to me K's account was being run in a way that would suggest fraudulent activity.

Mrs D has provided evidence of other customers' dissatisfaction with the quality of K's work, however dissatisfaction with the quality of work is more suggestive of a civil dispute. Also, I have to take into account that before Mrs D agreed to work with K, she talked to two of their

customers who provided positive reviews for their work. It appears that at least one of the consumers later expressed dissatisfaction, however at the point Mrs D talked to them there was nothing to suggest that they had concerns.

I realise that K didn't complete the contract, left the property in an uninhabitable state and that materials were removed from the building site in June 2022. But having carefully weighed up all of the information and evidence, I'm not satisfied that I can safely conclude that K set out with the intention to defraud Mrs D at the time she made the payments.

Everything I've seen persuades me it's more likely than not that K's business failed, which resulted in them being unable to complete the contracted work. On that basis, I think Mrs D's complaint against K is a civil dispute, which means I can't apply the CRM Code to her payments or ask HSBC to refund her due to any liability under the CRM Code.

But I have gone on to consider whether HSBC should've identified an APP scam risk and whether intervention would've made a difference.

Can I fairly hold HSBC liable to refund Mrs D for any other reason?

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam. So, even if a payment isn't covered by the CRM Code, there are situations where we would expect banks to identify a scam risk and intervene, and in some cases expect the bank not to follow the customers payment instruction.

Having looked at Mrs D's previous account usage, I think the first payment she made to K for £25,000 was so unusual and out of character that I would've expected HSBC to have identified a scam risk and intervened. However, in these circumstances I don't think intervention would've made a difference and I'll explain why.

Due to the size of the payment, I would've expected intervention by HSBC to involve a call to Mrs D to discuss the payment and the circumstances surrounding it. I'd expect HSBC to ask questions about the purpose of the payment, what checks Mrs D had done on the builder, how she'd found them, and further probing questions based on the information provided.

In this case, Mrs D became aware of K via a letter sent to her out of the blue. This is unusual, and I would've expected HSBC to ask questions about what checks Mrs D had done to make sure K was a genuine business. I think Mrs D would've told HSBC that she had talked to other customers of K's and been to inspect the work he'd done – and that the feedback she'd been given was positive. Mrs D is also likely to have confirmed that she'd checked the businesses website and read online reviews which were mostly positive, but that she'd questioned the one negative review and received a response from K that reassured her. At the time K's business was registered on Companies House and there were no indications to suggest that the company was in difficulties.

I think all of the information that was available to Mrs D, including the checks she'd done, the contract she had from K and the meeting she'd had with K and his partner at her property would've suggested that Mrs D was dealing with a legitimate business and wouldn't have required further intervention from HSBC. In these circumstances, I wouldn't have expected HSBC to have prevented the payment as there was nothing to suggest that Mrs D was potentially the victim of the scam.

As Mrs D made further payments, I wouldn't have expected further intervention from HSBC. I say this because the following five payments were made to the same payee, were all for £20,000 or less (which is lower than the original payment) and were spread out with at least four weeks between the payments. As such, I don't think the subsequent payments were unusual or out of character.

Having considered the information available at the time Mrs D made the payments to K, I would only expect HSBC to have intervened when she made the first payment and I'm not satisfied that HSBC could've or should've prevented her from making the payments to K. So, I can't fairly hold them liable for her loss.

I realise that Mrs D has lost a large sum of money which has seriously impacted her health and left her with financial difficulties. Unfortunately though, I can't fairly ask HSBC to refund her or hold them liable for her loss.

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 Mrs D to accept or reject my decision before 8 August 2023.

Lisa Lowe
Ombudsman