

## Complaint

Mr G is unhappy that HSBC UK Bank Plc didn't reimburse him after he told it he'd fallen victim to a scam.

## Background

The background to this case is well known to the parties and was set out in significant detail in the Investigator's view of the complaint. I don't intend to repeat that here.

In summary, Mr G was looking for a contractor to carry out significant renovation works to his home. He contacted a builder, Mr M, who gave a quotation for the works. Mr G was happy to proceed. He paid a deposit in November 2021 and then was periodically invoiced for materials relating to the job. In practice, no meaningful work was carried out by Mr M.

In January 2022, Mr M told Mr G that the materials needed for the rest of the job had been subject to significant inflationary pressures. It would therefore make sense to buy those materials earlier than originally planned to avoid potentially significant increases in costs. Mr M asked Mr G for a further £10,000 payment ahead of the schedule of works. Mr G sent part of this, but not the whole amount.

Mr G sent the following payments to the builder:

1	26 November 2021	£7,000.00
2	2 December 2021	£6,063.95
3	22 December 2021	£4,650.00
4	18 January 2022	£7,000.00

Mr G did later receive a small refund from the company.

He complained to HSBC but it didn't agree to reimburse him. HSBC said that Mr G wasn't the victim of a scam. Instead, he had a private civil dispute with Mr M. Mr G wasn't happy with the response from HSBC and so he referred his complaint to this service. It was looked at by an Investigator who upheld it.

She thought the evidence (in particular, evidence of substantial investigation into wrongdoing by Mr M being carried out by the authorities) suggested that this was a scam, rather than a civil dispute. She went on to consider the payments under the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. She was satisfied that there was no applicable exception to reimbursement in this case and so HSBC ought to refund Mr G's losses in full.

HSBC disagreed with the Investigator's view. It said it still thought this should be treated as a civil dispute, rather than a scam. It also said that, as there was an ongoing prosecution,

there was a risk of double recovery if any of Mr G's funds were confiscated from Mr M as part of that process. As HSBC disagreed, the complaint has been passed to me to consider and come to a final decision.

## Findings

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 at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the relevant regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. HSBC is a signatory to the CRM code. This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, like the one Mr G fell victim to, in all but a limited number of circumstances.

However, the CRM Code doesn't apply in all circumstances. It specifically doesn't cover *"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."* HSBC has sought to rely on this to say that the Code doesn't offer any protection to Mr G in these circumstances. However, I've seen evidence of an active investigation into this contractor by the Trading Standards team in the relevant local authority area. This evidence suggests a multitude of victims in similar circumstances to Mr G and there is a sufficiently strong body of evidence supporting those claims that Mr M will face criminal prosecution in the coming months. Overall, I'm satisfied that the overwhelming weight of evidence suggests that Mr G was a victim of fraud here, rather than being involved in a mere civil dispute.

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made; or
- In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

There are further exceptions within the CRM code, but they don't apply here

I can see that Mr G would most likely have seen warnings when making the payments online, but these gave general guidance and weren't sufficiently specific to meet the requirements for an effective warning under the Code, so I'm satisfied he didn't ignore an effective warning here.

As for the second exception listed above, the Investigator concluded that Mr G had made these payments with a reasonable basis for believing that he was dealing with a legitimate contractor. I'd agree with that conclusion. He found the contractor by searching on a widely used and reputable third-party website. Contractors who are listed on that site must be vetted and provide evidence that they have professional indemnity insurance. In addition, other customers had left positive reviews of Mr M's work on that website.

He met Mr M face-to-face and only agreed to pay a small deposit up front, which is typical in large construction projects like this one. In addition, the scam was supported with authentic looking documentation, such as invoices for the materials purchased. Overall, I don't think

Mr G would've had any reasonable basis for thinking that the contractor he'd engaged was anything other than legitimate. It follows that he made these payments with a reasonable basis of belief and HSBC should refund him under the Code.

#### *Non-financial loss*

The Investigator recommended that HSBC pay £150 in compensation to take account of the fact that this case was unnecessarily prolonged by its argument that Mr G needed to pursue his losses through the courts, and they weren't covered by the CRM Code.

I think once HSBC was aware of the extent of the investigation into the activities of Mr M, it ought to have recognised that he'd fallen victim to an APP scam and assessed his claim under the Code accordingly. However, the Investigator issued a view on this complaint more than six months ago and Mr G's claim under the Code still hasn't been determined. In light of that, I'm not convinced that £150 is an adequate sum given the subsequent delays. Instead, I think HSBC needs to pay him £225.

#### *Other issues*

HSBC has raised the possibility that, since Mr M is being prosecuted, the authorities may recover funds to which Mr G may have a partial entitlement. If HSBC reimburses him in full now, there is a risk that he ends up recovering more money than he lost to the scam. I don't know how likely it is that any funds will be recovered as part of those proceedings. However, I accept that it, if HSBC has reimbursed Mr G, it would clearly not be reasonable for those funds to be returned to him.

However, since HSBC can ask Mr G to undertake to transfer to it any rights it may have to recovery elsewhere, I'm not persuaded that this is a reasonable barrier to it reimbursing him in line with the Code's provisions.

#### **Final decision**

For the reasons I've set out above, I uphold the complaint.

If Mr G accepts this decision, HSBC UK Bank Plc needs to:

- refund the payments he made in connection with the scam, less the payments that were returned to him by the scammer. It should add 8% simple interest per annum to those payments calculated to run from the date it declined Mr G's claim under the CRM until the date any settlement is paid.
- Pay Mr G £225 in recognition of distress and inconvenience.

HSBC may require Mr G to provide an undertaking to assign to it his rights to any monies he might elsewhere be entitled to recover in respect of this loss. If HSBC asks him to provide such an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking. HSBC may treat Mr G's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, it would need to meet any costs in drawing up an undertaking of this type.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 April 2024.

James Kimmitt

**Ombudsman**