

The complaint

Mr R complains that HSBC UK Bank Plc won't refund money he says he lost to a scammer.

What happened

Mr R hired a builder to carry out works on his garden, garage and driveway. The builder completed works on Mr R's driveway and half of his garden. Whilst the builder was carrying out works on the garden, he asked for money to buy materials so Mr R he made the following payments to him:

- £4,880 on 6 April 2023
- £2,500 on 12 April 2023
- £1,000 on 12 April 2023

After making the payments Mr R says the builder left the work uncompleted and didn't return. Mr R tried to contact the builder a number of times to no avail.

Mr R says as his garage was demolished, he had to get someone else to complete the work. Mr R complained to HSBC and asked for it to assist with getting his money back. HSBC advised Mr R that it couldn't help him as this was a civil dispute but paid him £50 as a gesture of goodwill.

Unhappy with HSBC's response, Mr R referred his complaint to this service.

One of our Investigators didn't think HSBC acted unreasonably. She agreed with HSBC's conclusions that this was a civil dispute and there was no option for HSBC to recover Mr R's payments.

Mr R didn't agree and asked for an Ombudsman to consider his complaint.

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.

I'm sorry to hear about the situation Mr R has been left in. He paid out a considerable sum of money, yet the work he believed would be completed has not been. While he has been in contact with the builder on several occasions, he appears to no longer be receiving any contact.

Based on everything I've seen, it seems hard to argue that the builder breached his contract with Mr R based on his understanding of what he would receive in respect of his payments, so the builder may owe Mr R redress. But I'm not deciding a dispute between Mr R and the builder – I don't have the power to look into a complaint about the builder. My role is limited to deciding the dispute between Mr R and HSBC.

Of course, HSBC didn't contract with Mr R for the building project he wanted done, and I can't hold it responsible for any breach of contract or other failings on the builder's part. As a starting point in law, Mr R is responsible for the payments he instructed HSBC to make. Unfortunately, there's little protection available to him for bank transfer payments, like these were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of authorised push payment (APP) scams. But it specifically excludes private civil disputes.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as the builder's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

Specifically, the CRM Code details that private civil disputes can include payments made to a legitimate supplier where the goods ordered, or services agreed, were not received. The CRM Code will not apply to payments that meet that definition.

Instead, for a payment to be covered by the CRM Code, it must meet the definition of an APP Scam under the CRM Code. In this context, that would require that the very purpose for the builder obtaining payments was different to what Mr R believed - due to dishonest deception.

Simply put, in order to find that HSBC was somehow liable to Mr R under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mr R and the builder. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of the builder breaching their legitimate contract with Mr R.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that the builder set out to defraud Mr R with criminal intent. That is a high bar to meet.

It's important to note that it isn't for HSBC to investigate the builder, or somehow prove that he wasn't operating legitimately. It was for Mr R to provide evidence to support those allegations. While Mr R provided evidence to show that works were not completed and he has explained his purchased materials were taken by the builder, this could be consistent with the builder breaking a legitimate contract.

In an attempt to shed some light on the matter, our Investigator contacted the firm holding the account that received Mr R's payments. While I cannot detail the information that the recipient firm has provided in response, that information is not consistent with the builder having set out to defraud Mr R. Rather it suggests that the account use was consistent with someone carrying out this sort of work.

It's also significant that up until now there have been no other allegations of fraud made to the bank or negative online reviews. If the builder had not been operating legitimately and had scammed other people, then I would've expected some customers would have contacted their own bank and alleged fraud, the way Mr R did. I think the fact that this doesn't appear to have happened supports the argument HSBC makes for this really being a private civil dispute.

All considered I simply can't safely conclude that the builder took Mr R's money without ever having any intention of carrying out the work he paid for. The evidence available to me simply isn't enough to support such a finding.

I appreciate how frustrating and disappointing this answer will be. Mr R has lost a lot of money as a result of the builder's failure to complete the agreed work. But I can't exclude the possibility that the builder entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that the builder intended to steal Mr R's money from the outset and never had any intent of fulfilling the arrangement in full or in part

That means that I can't fairly hold HSBC responsible for the loss suffered here by Mr R. It also means I find the bank had no ability or obligation to try to recover his money.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr R and I'm sorry he has lost money through no fault of his own. It does seem his trust in the builder was misplaced and he has been let down. But that fault lies with the builder, not with the bank. And it's simply the case that I can't fairly tell HSBC to pay him the money he's lost, because I don't think HSBC has treated him unfairly or was otherwise at fault here.

My final decision

My final decision is, despite my natural sympathies for Mr R's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 April 2024.

Dolores Njemanze
Ombudsman