

The complaint

Mrs N is unhappy that HSBC UK Bank Plc ("HSBC") won't refund the money she lost to what she believed to be a scam.

Mrs N in bringing her complaint to our service is being represented. For ease of reading, I will refer to Mrs N throughout my decision.

What happened

I issued my provisional decision on this complaint on 11 January 2024. The background and circumstances of the case and the reasons why I was minded to uphold it were set out in that decision. I have reproduced the provisional decision in italics below:

In early 2022, Mrs N was looking for a builder to carry out some work and she identified and contacted a builder from an online marketplace. The builder gave Mrs N a quote and showed her a website which indicated the builder's company had traded for over 30 years.

Mrs N went ahead and hired the builder to complete the work. The builder completed some initial work, but he didn't complete all of the work Mrs N had paid him for. The work that was done was completed to a poor standard. And the property was left in a state of disrepair, which included a leaking roof that required Mrs N to employ different builders to put things right. Mrs N also didn't receive materials she'd paid for and later established that sub-contractor's the builder had used, hadn't received payment from the builder.

In total, Mrs N made payments totalling £53,903.90 to the builder, made up of £36,231.84 for labour and £17,672.06 for materials. But Mrs N has said that only half of the labour was completed and she didn't receive materials totalling £13,913.46. A breakdown of the payments made is listed below:

9 January 2022	£995	Labour
9 January 2022	£4,000	Labour
9 January 2022	£5,000	Labour
8 February 2022	£4,089.60	Materials (not received)
8 March 2022	£3,748.12	Labour
15 March 2022	£3,748.12	Labour
22 March 2022	£3,748.12	Labour
25 March 2022	£1,309.00	Materials (received)
29 March 2022	£3,748.12	Labour
4 April 2022	£5,206.27	Materials (£3,015.86 not received) (£2,190.41 received)
6 April 2022	£3,748.12	Labour
12 April 2022	£3,748.12	Labour
15 April 2022	£6,000.00	Materials (not received)
19 April 2022	£3,748.12	Labour
22 April 2022	£165	Materials (received)
22 April 2022	£808	Materials (not received)

24 April 2022

£94.19

Materials (received)

Mrs N says that she found out the builder was using an alias and had prior fraud convictions. She reported her concerns to the police, as well as HSBC and trading standards: and there is an ongoing investigation being carried out by the authorities.

Mrs N raised the matter with HSBC. It looked into Mrs N's complaint and issued its final response in November 2022 not upholding it. In summary, it considered the matter to be a civil dispute between Mrs N and the builder.

Unhappy with HSBC's response, Mrs N brought her complaint to this service. It was our Investigator's view that Mrs N had been the victim of a fraud and that HSBC should refund her in line with the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM code/the code), which it is a signatory of. Our Investigator thought HSBC should refund Mrs N for the cost of the materials she didn't receive, along with half of the labour costs.

HSBC didn't agree with our Investigator's view. In summary, it maintained this was a civil dispute and not a scam on the grounds that some of the materials and work had been delivered and completed.

As agreement couldn't be reached, the complaint has been passed to me for a decision.

What I've provisionally 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.

Having done so, I've decided to uphold this complaint. I'll explain why.

It is not in dispute that Mrs N authorised the payments to the builder. So she is presumed liable for them under the Payment Services Regulations 2017 (PSRs). However, as mentioned above HSBC is a signatory to the CRM code. This code sets out a basis on which it should retrospectively reimburse its customer if they fall victim to an authorised push payment (APP) scam.

It only applies to APP scams which it defines in the following terms:

"... a transfer of funds executed across Faster Payments, CHAPS or internal book transfer, authorised by the Customer in accordance with regulation 67 of the PSRs where The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

The code specifically excludes what it refers to as "private civil disputes" from its application. As an example of such a scenario, it says:

... 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."

It's quite clear that it doesn't protect customers in circumstances where they haven't fallen victim to a scam. To find that Mrs N's losses fall within the ambit of the code, I need to be persuaded that it's more likely than not that she was a victim of fraud. This isn't a straightforward question to address. I need to be persuaded that the builder she hired had a settled intention to scam her. I cannot know what was in the minds of the builder at the time.

As a result, I must infer what his intentions were based on what the available evidence tells me. I think this is a very finely balanced case – it is very difficult to know what the builder's intentions were. However, there are a number of factors which persuade me that the builder had no intention to finish the work he started, nor to provide all of the materials that Mrs N had paid for. On balance, I'm satisfied that the evidence supports the conclusion that this was a scam, rather than civil dispute.

Mrs N has said that the builder was using an alias, and indeed signed the contract with the alias name. I don't doubt what Mrs N has said here, indeed the beneficiary account that the payments were made to is in a different name to the name signed on the contract for works. Considering it was the builder who had signed the contract, and the same builder indicated that it was his bank account, it supports that an alias was being used. There are lots of reasons why someone might use an alias, but in the circumstances of this case I don't think it's an unreasonable assumption that this was done to prevent customers like Mrs N becoming aware of historic concerns around fraud.

I appreciate HSBC has argued that as some work had been carried out this should be deemed a civil matter. While many scams involve non-existent goods or services, 'rogue trader' scams generally involve some work being carried out on a property – normally to a poor standard. Such scams have a long history and the bank will be well aware of them. So, I don't think the fact the builder did start the work is determinative – I think it's more likely it was a ploy and was part of the scam. It helped to convince Mrs N to pay more money and to ensure the staged contractual weekly payments continued to be made. Photographs Mrs N has provided show her house was in a state of disrepair, requiring new builders to be hired to put things right and to complete the works that hadn't been carried out. All of which, goes towards substantiating that the builder didn't intend to complete the work.

I'm persuaded that finding is also supported by evidence I've seen regarding other people who have had the same experience around the same time, which indicates that the builder behaved largely in the same way as he did to Mrs N. And, having considered information provided to me by the beneficiary bank which received Mrs N's money, I think its actions are more representative of steps I'd usually expect a bank to take in scam cases as opposed to civil disputes. It showed that the builder was accused of fraud by multiple other clients.

Alongside this, I don't think a legitimate supplier of goods or services would retain funds that are intended to pay for materials or to pay sub-contractors. Mrs N has confirmed that she'd been in touch with some of these sub-contractors who confirmed that the builder hadn't settled with them for the work they'd carried out. Which I'm persuaded supports the case that the builder was taking Mrs N's money under false pretences and for their own financial gain.

I'm also mindful, in the circumstances of this case, that there is an ongoing criminal investigation, with authorities seeming to accept that fraud has likely taken place. I don't consider it unreasonable to also rely on that here.

Overall, the weight of evidence I've seen persuades me this was a scam, not a civil dispute. So the CRM code applies – meaning the starting position is that HSBC should refund Mrs N.

There are some exceptions under the code, where a firm may not be expected to fully reimburse a customer who hasn't met the standards expected of them. But HSBC hasn't argued that any such exceptions apply here. But in the interest of completeness, I'm satisfied it wouldn't be fair to apply an exception relating to the actions Mrs N took. I don't think Mrs N would have had reasons to doubt the legitimacy of the builder at the time she engaged with them. It didn't become apparent that the work wouldn't be completed, or that materials wouldn't be delivered that had been paid for, until later on. Nor can I see that Mrs

N was shown an effective warning by HSBC, when making these payments, which ought to have alerted her that this was a scam.

Putting things right

In all the circumstances, for the reasons given above, I'm minded to say that HSBC ought to have refunded Mrs N when she raised her fraud claim.

In making this award I'm mindful that Mrs N did receive some of the materials she purchased and some work was carried out. So I've included what I consider to be a fair and pragmatic reduction for that.

Overall, I'm currently minded to ask HSBC UK Bank Plc to refund Mrs N £32,029.38, plus interest, which is made up as follows;

- 50% of the cost of the labour, being £18,115.92 (50% of £36,231.84)
- £13,913.46 (being monies paid for material that wasn't received) and HSBC UK Bank Plc should;

Pay 8% simple interest per year on £32,029.38, calculated from the date HSBC UK Bank Plc originally declined Mrs N's claim under the CRM Code until the date of settlement.

My provisional decision

My provisional decision is that I uphold this complaint and intend to direct HSBC UK Bank Plc to put things right in line with what I've set out above.

Mrs N responded to the provisional decision and confirmed that she was happy to accept it. HSBC didn't reply to my provisional decision.

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.

Having done so, as Mrs N accepted my provisional decision and as HSBC hasn't sent any new evidence or arguments for me to consider about the disputed transactions, I see no reason to depart from the conclusions set out in my provisional decision and summarised above. Overall, for the reasons set out here and in my provisional decision, I remain of the view that this complaint should be upheld.

Putting things right

To put matters right HSBC UK Bank Plc should now refund Mrs N £32,029.38, plus interest, which is made up as follows;

- 50% of the cost of the labour, being £18,115.92 (50% of £36,231.84)
- £13,913.46 (being monies paid for material that wasn't received) and HSBC UK Bank Plc should;

- Pay 8% simple interest per year on £32,029.38, calculated from the date HSBC UK Bank Plc originally declined Mrs N's claim under the CRM Code until the date of settlement.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 26 February 2024.

Stephen Wise
Ombudsman