

The complaint

Ms A complains that HSBC UK Bank Plc ('HSBC') won't refund the money she lost as the result of a scam.

What happened

In 2022, Ms A needed building work completed on her home. Ms A says she got quotes and selected a builder who I'll refer to as M. M said they worked for a building company who I'll refer to as C. Ms A isn't sure how she found M, but it may've been through an online website that lists approved local tradespeople. Ms A says the quote M provided was similar to the other quotes she'd received.

Ms A agreed the work to be completed and signed a contract on 15 November 2022. This quoted the total for the work as £14,500, with a deposit to be paid upfront of £8,000 and the balance of £6,500 to be paid on completion of the work.

A few days later Ms A agreed for some additional work to be done, a loft conversion. She signed a separate contract for this work on 23 November 2022. This quoted the total for the work as £15,000, with a deposit to be paid upfront of £10,000 and the balance of £5,000 to be paid on completion.

Ms A says a third contract was agreed for further additional work which was quoted as £6,250 – however she hasn't provided a copy of this contract.

Ms A says that the work agreed on two of the contracts was started but not completed, and none of the work associated with the loft conversion was completed. Ms A says she's been left with an uninhabitable house, with no ceilings in a number of rooms, gutter and downspouts not fitted properly, some tiles not fitted securely, no insulation in the roofing, no window structures and various other issues.

The total quoted on all three invoices was £35,750, and Ms A made payments totalling £30,750.

Ms A made the following payments from her HSBC account. The payee on these payments was M, not C.

Date	Detail	Amount
15.11.2022	Payment to M	£8,000
25.11.2022	Payment to M	£10,000
1.12.2022	Payment to M	£6,250
12.12.2022	Credit received from M – ref: materials	£610 cr
13.12.2022	Payment to M	£6,500
15.12.2022	Credit received from M – ref: materials	£75 cr

Ms A received two credits into her account from M, which she says was reimbursement for materials that she ordered and paid for online in relation to the work M was completing.

Ms A says the last time that M was at her property was 15 December 2022, and at that time M told her he would be back on 4 January 2023 to complete the work. In April 2024, when M hadn't returned to the property and communication had broken down, Ms A raised a fraud claim with HSBC.

HSBC investigated Ms A's fraud claim but declined to refund her, saying the matter was a civil dispute between Ms A and M.

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

An investigator looked into Ms A's complaint and upheld it in full. The investigator felt Ms A had been the victim of a scam and under the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code), she was entitled to a full refund.

HSBC disagreed with the investigator's opinion, saying that based on the evidence provided M was a genuine builder and that the matter was a civil dispute, which meant it isn't covered by the CRM Code.

HSBC asked for an ombudsman to review the case.

Having reviewed the case, I intended to reach a different outcome than the investigator. So, I wanted to share my reasoning with both parties and give them the opportunity to respond before I issued a final decision. I issued my provisional decision on 19 March 2024.

My provisional decision

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

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).

Is Ms A entitled a refund under the CRM Code

HSBC are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

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

So, in order to decide whether the circumstances under which Ms A made her payments meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Ms A thought this purpose was legitimate.
- The purpose the recipient had in mind at the time of the payments and whether this

was broadly in line with what Ms A understood the purpose to be.

And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

In this case, Ms A was making payments to M for building work. I haven't seen anything that would suggest Ms A didn't think this was legitimate.

So, I've gone on to consider what purpose M had in mind and whether it was in line with what Ms A thought.

In reaching an answer on what purpose M had in mind, I've considered the wider circumstances surrounding M, as well as C, who M said they worked for. In this case, the key information is:

- While M hasn't completed the work agreed with Ms A, a substantial amount of work has been completed, albeit that some appears to be of a substandard quality.
- C is a UK incorporated company which has been operating since June 2021 in the building industry. There is currently an active proposal to strike off, which has been active since August 2022.
- M reimbursed Ms A for some materials that she ordered and paid for herself, which isn't the usual behaviour of someone who has no intention of doing the work.
- It appears that up until 15 December 2022 the building work was progressing as expected, as Ms A paid more than the deposit that was required under the separate contracts.
- There is no information from the police or trading standards which suggests that M took the payments from Ms A with no intention of doing the work, or that dishonest deception was used at the time of the payments.
- We've received third party information from the receiving bank, which I can't share with Ms A. However, it satisfies me that it's more likely than not M intended to do the building work and doesn't suggest that M had a different purpose in mind in taking the payments.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say M took Ms A's money with a different purpose in mind or through dishonest deception.

I think it's worth noting that Ms A has paid significantly more than the deposit required for the three contracts and appears to have paid the full quoted price for at least one of the contracts. Also, it seems that up to 15 December 2022, M was completing the work as expected, but something happened following that date which meant he didn't return to the property.

However, just because the work hasn't been completed, doesn't mean Ms A's situation meets the definition of an APP scam. A business failing, a breach of contract, or dissatisfaction with the quality of the work completed, doesn't necessarily evidence the intention at the time the payment was taken. It also doesn't show that M didn't have the intention to do the work when he took the payments from Ms A, which is the conclusion I would need to reach in order to consider Ms A's complaint under the CRM Code.

Having carefully considered all of the evidence, I'm not satisfied that I can safely conclude that the circumstances under which Ms A made the payments meets the definition of an APP scam, therefore I can't fairly ask HSBC to refund her under the CRM Code.

Is there any other reason I can fairly ask HSBC to refund Ms A

I've also thought about whether HSBC could've prevented Ms A's loss when she made the payments.

I would expect 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.

Taking into account the information available at the time Ms A made the payments, I'm not satisfied that intervention by HSBC would've made a difference. I say this because all of the information Ms A had suggested she was dealing with a legitimate builder, including:

- The price that Ms A was quoted wasn't too good to be true, as Ms A says it was in line with other quotes she received.
- C was a UK incorporated company in the building industry for over a year prior to Ms A making her payment.
- The contract that Ms A was given was professional, detailed the agreement between both parties and appeared to be legitimate.
- I can't see that there was any information online which suggested that C or M may be a scammer.
- Ms A believes she may've found M or C via an online website that lists approved local tradespeople.

Based on the information that was available when Ms A made the payments, I'm not satisfied that any questions HSBC would've asked, would've suggested that Ms A was potentially the victim of a scam. On that basis, I'm not satisfied that they missed an opportunity to prevent Ms A's loss.

I understand that Ms A is going to be extremely disappointed as she has been left with a home that requires substantial additional work in order to bring it up to a reasonable standard for her and her family. I also understand that Ms A is experiencing financial difficulties and that this has taken a huge toll on the health and wellbeing of her and her family. But I'm not satisfied, based on the evidence, that I can fairly hold HSBC liable or ask them to refund her.

My provisional decision was that I didn't intend to uphold this 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.

HSBC responded to say they had nothing further to add. However, despite us contacting Ms A to check she received the provisional decision, she hasn't responded.

As the provisional decision response deadline has passed, I've reconsidered the information and evidence in order to reach my final decision.

Having done so, I see no reason to reach a different outcome than I did in my provisional decision.

From what I've seen, I'm not satisfied that M took the payments from Ms A with no intention of doing the building work or through dishonest deception. While I accept that Ms A isn't happy with the quality of some of the work M completed, and that some work hasn't been completed, that isn't enough for me to say that the circumstances under which Ms A made her payments meets the definition of an APP scam. On that basis, I can't apply the CRM Code to Ms A's payments or ask HSBC to refund her due to any obligation under the CRM Code.

And, based on the information Ms A had at the time she made the payments, I'm not persuaded that intervention by HSBC would've prevented Ms A's loss. I say this because all the information Ms A had when she made the payments, suggested that she was dealing with a legitimate tradesperson. So, I'm not satisfied that intervention by HSBC would've made a difference.

I'm very sorry to disappoint Ms A, but I'm not satisfied that I can fairly ask HSBC to refund her.

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 Ms A to accept or reject my decision before 21 May 2024.

Lisa Lowe
Ombudsman