

The complaint

Mr I is unhappy that HSBC UK Bank Plc won't refund the money he lost to what he believes was a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary I understand it to be as follows.

In late 2021 Mr I was looking for a builder to carry out some work on his property, including building an extension. He found details of a builder, who I will call P, online. P quoted £100,000 for the work Mr I wanted done - with £10,000 to be paid as a deposit and then £5,000 weekly for 18 weeks. Mr I made the first payment from his HSBC account on 4 January 2022, for £10,000. Over the next five months he then made a further eight payments, for between £2,500 and £5,000 at a time. Mr I says he was told all of these payments were for materials, and that he was shown receipts for these materials and photos showing they were being stored by P (as P had said Mr I's property was not secure so materials could not be stored there).

During this period Mr I says he also paid £32,000 in cash to P, for the installation of a bathroom in his home. The work on this bathroom was completed, apparently by a subcontractor working for P, but Mr I was unhappy with the quality of the work done. Mr I says P looked at the work the subcontractor had done and agreed it was to a poor standard, and that P assured Mr I this work would be rectified. However, aside from this bathroom, Mr I says no other work was completed by P.

He says P gave repeated excuses for why he could not work at the property, and when six months had passed with very little progress Mr I began to look further into P. At this stage he realised he had likely been scammed, as he identified that reviews he'd seen and examples of P's work he'd been shown were faked and that others appeared to have also fallen victim to the same scam from P.

Mr I reported his concerns to the police and trading standards, and there is an ongoing investigation being carried out by the authorities.

Mr I also raised the matter with HSBC. It looked into Mr I's complaint but did not consider it was liable for his loss, it considered the matter to be a civil dispute between Mr I and the builder.

Unhappy with HSBC's response, Mr I brought his complaint to this service. Our investigator looked at what had happened, but they agreed with HSBC that this was most likely a civil dispute, and that Mr I was therefore not entitled to a refund of any of his loss.

Mr I remained unhappy, so as agreement couldn't be reached, the complaint was passed to me for a decision. I issued my provisional findings on this case on 27 June 2024, explaining why I felt Mr I should be reimbursed for his loss. Mr I accepted my provisional findings, HSBC did not.

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.

In my provisional decision I explained the following:

"It is not in dispute that Mr I authorised the payments to the builder. So, he is presumed liable for them under the Payment Services Regulations 2017 (PSRs). However, HSBC is a signatory to the Trading Standards Board's Contingent Reimbursement Code (the CRM Code). This code sets out a basis on which firms should reimburse customers if they fall victim to an authorised push payment (APP) scam.

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."

To find that Mr I's losses fall within the remit of the code, I need to be persuaded that it's more likely than not that he was a victim of fraud. This isn't a straightforward question to address. Essentially, I need to be persuaded that the builder he hired had a settled intention to scam him. But, of course, I cannot know what was in the mind of the builder at the time. So, 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 Mr I had paid for. On balance, I'm satisfied that the evidence supports the conclusion that this was a scam, rather than a civil dispute.

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 that some work was done is determinative – I think it's more likely it was a ploy and was part of the scam. It helped to convince Mr I to pay more money and to ensure the contractual weekly payments continued to be made. Particularly as it would appear that the only work completed was the bathroom refurbishment, which was done by a subcontractor, not by P.

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 Mr I. Alongside this, I don't think a legitimate supplier of goods or services would retain funds that are intended to pay for materials. Mr I has confirmed that he's been in touch with some of the suppliers P claimed to be using and that they have confirmed no materials were supplied. Which I'm persuaded supports the case that the builder was taking Mr I'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, which has been escalated to the Crown Court and which includes over 20 charges levelled against P for running a fraudulent business. 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 Mr I.

The Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr I fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the 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*
- The customer made the payment without a reasonable basis for believing that:*
 - o the payee was the person the customer was expecting to pay;*
 - o the payment was for genuine goods or services; and/or*
 - o the person or business with whom they transacted was legitimate*

There are further exceptions within the Code, but these don't apply here.

HSBC has argued that Mr I didn't act reasonably and should have done more to check who he was paying. But having thought carefully, I don't agree that is the case. I'm satisfied that Mr I made these payments with a reasonable basis to believe that they were to a genuine business for a legitimate service.

When Mr I engaged Ps' services he was given details of various individuals who P claimed were satisfied customers. Mr P saw the work P claimed he had done for those people, and this helped to reassure him that P was a legitimate builder carrying out work to a high standard. Mr I says he has since discovered that these individuals were relatives or friends of P, and so not giving honest and accurate reflections of P's work, but there is no way he would have known that at the time.

I acknowledge what HSBC has said about P's history – that on viewing his record on Companies House it can be seen that previous companies he was involved with have been dissolved or struck off the register – the implication being that P would therefore be inherently not reputable and that Mr I should have known this. But I do not consider that it would be usual for someone engaging a builder – particularly one who appeared to be operating as a sole trader rather than a limited company – to conduct any detailed search of Companies House. In my mind, reasonable due diligence was to seek out reviews and examples of the builder's work, and it seems this is what Mr I did. So, I'm satisfied that Mr I would not have known that P was likely to be acting dishonestly when he began to make the payments.

I also acknowledge HSBC's comments that, as the scam progressed and the work Mr I had engaged P to do was not progressing, he should have begun to realise that all was not as it seemed. I've thought carefully about this, and I can see HSBC's point of view here. But with what I've seen I'm satisfied that Mr I was reasonable to behave as he did. It is my understanding that Mr I was shown numerous invoices and photos of materials which convinced him that the funds he was paying to P were being used to buy the materials needed for his extension. I also understand that planning permission for the extension was not granted until March 2022, thereby giving a plausible explanation for why P was not completing the agreed works. Mr I has explained that P also provided several personal reasons as to why he couldn't work over the relevant period, including that his son was seriously unwell and that his mother had died (which appears to have been a lie).

P's subcontractor then started work on the bathroom in April 2022, and this work was completed – although not to Mr P's satisfaction – later that month. But given that a subcontractor had done this work, and Mr I has said P visited the property to see this work, agreed it had been done poorly, and said he would arrange for it to be put right, I don't think this would necessarily have been a red flag regarding Mr I's arrangement with P. When Mr I did begin to have suspicions about P, he carried out further investigations of his own and uncovered that he had been scammed when he came across others who were in the same position as him, and discovered that the 'satisfied customers' he had spoken to were not who they claimed to be.

With all of this in mind I don't think Mr I acted unreasonably here. I consider that he had a reasonable basis for believing he was paying a genuine supplier for a legitimate service.

I'm also not persuaded that the warnings given during the payment process were enough to undermine the reasonableness of Mr I's belief. When Mr I made this first payment he selected 'paying friends and family' as the payment reason, and so received a warning relevant to that purpose. Given the circumstances here, this warning would not have been relevant to Mr I's actual situation. However, even if he had selected the right purpose for his payment – paying bills – the warning HSBC says it would have given would not, in my mind, have rung alarm bells for Mr I.

The first warning given to Mr I when he set up P as a new payee was relatively generic, and required him to click out of the message by following a link to see any detailed information about scams. And the second, more detailed, warning which would have been given if he had selected the correct payment purpose was very much focused on the type of scam where a genuine business is being impersonated, so I don't consider that any of those points would have resonated with Mr I or led him to realise that he could be at risk of fraud.

So, in summary, I don't consider that HSBC can reasonably rely on the exceptions it has detailed. It follows that I consider HSBC should have reimbursed Mr I under the CRM Code."

In response to my provisional decision HSBC has said that, along with the points it had already made which I have addressed above, it also considered that it was unreasonable for Mr I to have made payments to P for work that he had not yet received planning permission for. I don't agree with HSBC's comments here. I acknowledge that work would not have been able to commence until planning permission was granted, but I don't think that means it was unreasonable for Mr I to make payments to P for materials – which is what he believed these payments were for – in readiness for planning permission being granted. And I've not seen anything to suggest that the work Mr I was having done was particularly out of the ordinary, so it seems reasonable for him to have assumed planning permission would be granted without too many issues – as indeed it was.

And, in any case, I can't see how being asked to pay for materials before planning was granted would have been an indicator to Mr I that he was being scammed, particularly in light of the other points I have noted above which convinced him P was a legitimate builder.

With this in mind I remain satisfied that Mr I did have a reasonable basis for believing that the payments he was making were to a legitimate supplier for legitimate purposes. So, as set out in my provisional decision, I consider that it is not fair for HSBC to rely on any of the exceptions in the CRM Code. It follows that HSBC should reimburse Mr I for his loss.

Putting things right

To resolve this complaint HSBC should refund to Mr I the money he lost to the scam, plus 8% simple interest per year, calculated from the date HSBC originally declined Mr I's claim under the CRM Code until the date of settlement.

My final decision

I uphold this complaint. HSBC UK Bank Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 15 August 2024.

Sophie Mitchell
Ombudsman