

## **The complaint**

Mr A and Miss G are unhappy that HSBC UK Bank plc ('HSBC'), has decided not to refund money they consider they lost, to what they believed was an Authorised Push Payment ('APP') rogue trader scam whereby they sent money to an account held at HSBC.

As Mr A referred the matter to this service, within this decision and for ease, I will solely refer to Mr A. No discourtesy is intended by this.

## **What happened**

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

Mr A was looking to have some renovation work done. He enlisted the services of a building company / builder, whom I'll call 'M', that he had found online. There was some damp proofing work to be done in the living room, dining room and kitchen and a new kitchen was to be installed also. A price of around £8,000 was agreed and payments were to be made over three stages.

Across August and September 2023, Mr A made four payments totalling £6,000 to M's account at HSBC.

Mr A has advised that the damp proofing work on the living room and dining room was completed. The damp proofing work to the kitchen was started but not fully finished with finishing plaster. Mr A advised the original kitchen was cleared out and the old units were removed, but the new kitchen hasn't been installed.

Mr A believes M scammed him and there were reports online about M saying he was a rogue trader. And there were others who had paid M, with M not finishing the work.

Mr A reported the matter to his bank to see if he could recover or be reimbursed for his loss. Mr A also raised a complaint about HSBC, where M held its account. Mr A had concerns HSBC were allowing a fraudster to operate an account.

HSBC considered there had been no fraudulent activity (in essence, deeming the matter was a civil dispute between Mr A and M). So, didn't consider it was liable to reimburse him for his loss. Mr A subsequently referred the matter to our service.

One of our Investigators looked into this complaint and didn't think the complaint should be upheld. In summary, it was our Investigator's view that, based on what he'd seen, he didn't think M had set out with intent to scam Mr A – and it was a civil dispute between the two parties. Our Investigator also didn't consider HSBC could have prevented the loss and so weren't liable for any other reason. So, he didn't think he could fairly ask HSBC to provide a refund to Mr A.

Mr A didn't agree with our Investigator's view and requested an ombudsman's review. So, as an agreement hasn't been reached, it has been passed to me for a final 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here, which is whether HSBC was fair in its answering of the complaint that the matter was a civil dispute and to see whether there was anything else HSBC could have done to prevent the loss. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

HSBC is a signatory to the Lending Standards Board's 'Contingent Reimbursement Model' (the 'CRM Code'). Under the CRM Code, Sending Firms and Receiving Firms (so here that is HSBC), are expected to reimburse customers who fall victim to APP scams, subject to a number of exceptions.

However, the CRM Code is only relevant if I'm persuaded Mr A did fall victim to an APP scam. The CRM Code specifically excludes certain types of disputes. It says:

*"DS2(2) This code does not apply to:*

*(b) 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;" \**

\*Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

So, taking into consideration the above, I must first decide whether Mr A has likely been the victim of an APP scam or not.

In order to be persuaded on balance that Mr A has been the victim of an APP scam I need to look to the relevant definitions set out in the CRM code.

Here, that is DS1(2)(a)(ii) which says:

*"(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

Looking at the above definition, I firstly need to consider the purpose of the payment and whether Mr A thought this purpose was legitimate. Mr A has explained that he believed the payment he was making was for building work to be carried out by a genuine company / builder. So, I'm satisfied he thought the payment was made for a legitimate purpose. I must also consider the purpose the recipient (here that is M) had in mind, at the time of the payment, and whether this was broadly in line with what Mr A understood to be the purpose of the payment.

In the circumstances of this case, having reviewed all the testimony, information and evidence provided by both parties, I can't fairly and reasonably conclude that it was more likely than not that M set out with intent to defraud Mr A. I'm satisfied, on the balance of probabilities, that the intentions and purpose of the payment match here. Mr A intended for work to be done, and M seemingly intended on fulfilling that purpose by carrying out the works – until things sadly went awry.

Obviously, I cannot know for sure what was in the mind of M at the time the payment was received. So as a result, I must infer what M's intentions were, based on the available evidence that I have had access to.

Mr A has advised that the majority of the work was completed. The damp proofing work to the dining room, living room and kitchen had been completed – albeit with the kitchen needing some finishing plaster. And the original kitchen units had been removed and the kitchen cleared, ready for the new installation. Here, I am mindful that the overall price quoted for Mr A was around £8,000, and in total, Mr A had paid £6,000 to M when things seemed to go wrong. So, I don't think I can fairly say there was never an intent by Mr A to carry out the works and defraud Mr A. And I agree with our Investigator here that as there was seemingly an outstanding balance due, and the final stage not being completed seemingly as a result, the circumstances therefore seem to relate to a disagreement or dispute between Mr A and M.

HSBC has provided information / comments about M. And it has done so, in confidence, to allow our service to discharge our investigatory functions. The information that has been provided is to assist with the determination of this complaint. Due to data protection laws, our service can't share any information about the beneficiary or the receiving bank account. From reviewing the information, HSBC has advised that the account had been opened for a considerable period of time and it had no concerns and there were no other fraud reports. And from reviewing M's statements, the account activity was in line with what you would expect to see from someone carrying out building work in the capacity that M was.

I can appreciate that Mr A has provided evidence that he suggests shows M had previous history of not finishing works. And that M has also had several companies. I accept there maybe questions marks over how M operates, and I also accept M may not have been operating at the standards one might expect. But, while that may speak to poor business practices and unprofessionalism, it doesn't automatically mean that there was an intent by M to defraud Mr A and take his money without having any intention of carrying out the work. Much of the work was completed here. And I can't fairly or reasonably conclude that the work wasn't finished as a result of M acting fraudulently. I have to bear in mind it is also likely there could be other reasons why the work was stopped at its final stage – given how much worked had been completed over the timeframe and against what had been paid.

While I know Mr A feels strongly about the matter, I've not seen anything that I can safely say meets the high legal threshold and burden of proof for fraud.

Any dissatisfaction with the lack of completion of the contract or the quality of the work that was carried out – is a civil dispute rather than a scam. This type of dispute isn't something that the CRM Code was designed to cover. The reason being that a dispute like this is more appropriate to be looked at potentially through civil means, such as court. A court would be best placed to determine what materials and labour costs have actually been incurred, the amount of work carried out to date against what has been paid, in order to determine what is still outstanding or what amount is possibly owed – with both Mr A and M having the chance to provide their evidence to support their positions.

I accept Mr A considers he is out of pocket, and has been let down by M. But that in and of itself is not enough to say he's been the victim of an APP scam whereby HSBC may be required to partially reimburse him (for its share of any potential liability). Overall, I'm satisfied that this scenario doesn't meet the CRM Code's definition of an APP scam and is a civil dispute which isn't covered under the provisions of the CRM Code.

*Was there anything else HSBC could have done to prevent Mr A's loss from the alleged APP fraud?*

While I have considered the matter a civil dispute between Mr A and M, and I'm not satisfied Mr A was the victim of a scam, I have – for completeness – looked at Mr A's concerns around the receiving account. In short, Mr A considers HSBC allowed one its accounts to be used fraudulently. Having reviewed this element of Mr A's complaint, I don't find HSBC has acted unfairly or is liable in some way. I'll explain why.

Among other things, regulated firms receiving payments like HSBC, are required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements.

Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

And, more generally given the increase in sophisticated fraud and scams in recent years, as a matter of good industry practice at the time, I think firms should reasonably have had measures in place to detect suspicious transactions or activities that might indicate fraud or financial abuse (something also recognised by the Banking Standards Institute's October 2017 'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice').

And I'm satisfied that this good practice requirement meant not just looking out for situations where a customer might be the victim of fraud, but also situations where the customer might be the perpetrator of fraud or a money mule.

To help decide whether or not a bank failed to prevent the loss, there are three main areas I have to consider. And those areas are the opening of the account, the ongoing monitoring of the account and whether the bank responded promptly to the notification of alleged APP fraud.

*Account opening*

Our service only has powers to consider complaints about Receiving Firms since 31 January 2019 – and we can't consider any acts or omissions carried out by a Receiving Firm that occurred before this date. That means if the account was opened before this date, I am unable to comment or make a finding as to whether I consider a Firm may have failed in its obligations in any way.

In this case, the beneficiary account was opened prior to 2019, so I am unable to comment on or make a finding about the account opening process – as the act of HSBC opening the account happened prior to when our service had the power to look into complaints about Receiving Firms.

### The ongoing monitoring of the account

From looking at the account history for the beneficiary account – it had been operating for a considerable amount of time. And I can't say there was any account activity that I think would reasonably have stood out to HSBC as suspicious or significantly outside of what might be expected for an account of that type. I'm also satisfied there was no notification of fraud on the account prior to the payments Mr A made into the account and no other red flags where it could reasonably be argued that HSBC might have had sufficient grounds to suspect fraud and refuse execution of their customer's payment instructions.

Personal and business accounts often receive incoming credits, and in this case, I think it is reasonable to say that there was nothing to indicate to HSBC that there was anything suspicious going on with the beneficiary account. So, I can't fairly say that it could have prevented Mr A's loss in this way.

### Response to notification of alleged APP fraud

The Best Practice Standards set out that a Receiving Firm must take appropriate action, in a speedy manner, upon notification of alleged APP fraud. If, after a review, it is deemed fraudulent activity has taken place, then it has to notify the Sending Firm if any funds remain for recovery. Here, once notified of the scam, I'm satisfied HSBC took the necessary actions required of it and did so in a timely manner. And, as its review concluded that the matter amounted to a civil dispute between the parties, there was no recourse for HSBC to recover and return any funds.

### Summary

I'm sympathetic to the position Mr A finds himself in and I am sorry to have to deliver this news to him. But, for the reasons I have explained and based on the available evidence I have seen; I consider the matter is a civil dispute which isn't covered by the CRM Code and is therefore something that needs to be resolved between the two parties through alternative methods. I also don't think HSBC could've done anything more as the Receiving Firm to have prevented the loss of Mr A's money. And it responded appropriately once notified of the alleged APP fraud.

So, it follows that I don't think they are liable to reimburse Mr A for his loss under the CRM Code or otherwise.

### **My final decision**

For the reasons explained, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss G to accept or reject my decision before 15 May 2025.

Matthew Horner  
**Ombudsman**