

## **The complaint**

S, a limited company represented in this complaint by Mr H, complains that HSBC UK Bank Plc has not refunded the money S lost to what Mr H believes was a scam.

## **What happened**

In February 2023 Mr H was looking to have some work done on S's premises. He was recommended a shopfitter by someone he knew, I'll call this shopfitter P. P visited S's premises to take measurements and provided a quote and schedule of works. Mr H agreed to go ahead, and P asked for a deposit of £16,521, which Mr H paid from S's business account held at HSBC in February 2023.

Over the next few weeks there were various reasons why P said it could not start the work and so Mr H asked to cancel the agreement and for S's deposit to be refunded in late March 2023. There was some back and forth between P and Mr H about this refund, but ultimately no funds were returned to S.

So, in April 2023, Mr H contacted HSBC to tell it that he believed he may have been scammed. HSBC looked into what had happened, but did not feel it was liable for any of S's loss. It said it had queried the payment with Mr H at the time and provided him with a scam warning.

Unhappy with HSBC's response, Mr H brought S's complaint to this service and one of our Investigators looked into things. But having thought carefully about the evidence available, they thought that this was most likely a civil dispute between S and P, meaning that S would not be entitled to a refund of the loss.

Mr H disagreed with the Investigator's findings, he feels that the evidence shows P had no intention of doing the work, and had set out to scam S. As no agreement could be reached this complaint has been passed to me for review.

## **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 and having thought very carefully about all the evidence provided by both parties, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Mr H but, whilst I'm sorry to hear of what's happened, and appreciate the impact this has had on S, I don't think I can fairly hold HSBC liable for S's loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I understand that Mr H feels he has been the victim of fraud, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than fraud or a scam) for a dispute to exist between two parties.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which HSBC has signed up to and which was in force at the time the relevant payment was made. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether HSBC therefore ought to reimburse S under the provisions of the CRM Code.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

*“...a transfer of funds...where (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or (ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

The CRM Code is also quite explicit that it doesn't apply to all push payments. 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.”*

Fraudulent isn't defined in the CRM Code, but as the CRM Code specifically excludes civil disputes, I think I need to consider, as a first step, whether this was a scam (where a scammer takes money from a customer for no legitimate purpose) or a civil dispute (where a payment is made to a legitimate trading company or business, but there is some dispute about the goods or services that should have been supplied).

If this was a scam, or fraud – then banks (including HSBC) must follow industry and regulatory guidance, including the CRM Code, to check certain payments and in some circumstances, protect customers by stopping the payments and contacting customers about them. And where banks haven't followed the guidance, they can be asked to refund them. But where payments are made to a legitimate business for a legitimate reason, then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

Having thought very carefully about all that Mr H has said, and about the evidence provided by all parties to this complaint, I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that P set out with an intent to defraud S.

I say this for the following reasons:

- P appears to have been a legitimate business, which had been operating successfully for several years, and which was registered on Companies House.
- Mr H has told us that P was recommended to him by someone he knew and that he was aware P had done other work locally.
- P visited S's premises and provided a detailed quote, method statement and risk assessments of the work to be done, this is not what we would necessarily expect to see if P had set out to scam S. I acknowledge that P's quote was apparently based on a quote provided by another supplier, but I don't think that is an indication that P did not intend to do the work or was otherwise acting fraudulently.

- P's account statements do suggest it was carrying out transactions that one might expect from a shopfitting business and give no indication that S's funds were used for any other purpose.
- P's bank has told us it had received no other scam claims against P.

All of this leads me to consider that P was more than likely operating as a legitimate business. I acknowledge that P ultimately did not provide the services agreed, nor did it refund S's funds when Mr H cancelled the agreement, but there are many reasons, other than fraud, why a legitimate business may be unable to provide the services it has promised or refund a deposit. A business may act unprofessionally but still be carrying out legitimate business, or it may get into financial trouble and be unable to meet its obligations to customers – and this certainly seems possible here given that P was ultimately dissolved, and its director was declared bankrupt. And this service isn't in a position to forensically analyse P's actions here; we must consider the evidence that is before us. And, in doing so, I've not seen persuasive evidence that P set out to defraud S.

I know this will be a huge disappointment to Mr H. I appreciate how strongly he feels about this case, and that S has lost a significant amount of money here. But for the reasons I've explained above, I do not consider that the payment in dispute here is covered under the CRM Code, or that it would be fair to hold HSBC responsible for the money lost under any of the other relevant regulations or guidance.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 1 May 2025.

Sophie Mitchell  
**Ombudsman**