

The complaint

Mr and Mrs K complain that HSBC UK Bank PLC ('HSBC') hasn't refunded the money they believe they lost to an authorised push payment ('APP') scam.

What happened

The circumstances of the complaint are well-known to both parties, so I don't intend to set these out in detail here. However, I'll provide a brief summary of what's happened.

In August 2022, Mr and Mrs K instructed a third party – which I'll refer to as 'Company P' – to replace their roof. At the time, Company P had been carrying out work for one of Mr and Mrs K's neighbours. Company P also replaced the roof for Mr and Mrs K's adjoining neighbour. Mr and Mrs K made a one-off payment to one of Company P's workers for £9,000, after which the work was completed. The invoice provided to Mr and Mrs K said the work was guaranteed for a ten-year period.

Approximately one year later, Mr and Mrs K's neighbour's roof began to leak. The roof was inspected, and the work carried out by Company P was found to have been done to a poor standard. Issues were also identified with Mr and Mrs K's roof at that time.

Mr and Mrs K attempted to contact Company P to claim under the ten-year guarantee but weren't able to reach them. So, in November 2023, Mr and Mrs K instructed a different third party to repair their roof, for which they were quoted a total price of £2,376.

Mr and Mrs K became aware that one of the persons representing Company P – whom I'll refer to as 'T' – had, in August 2022, pleaded guilty to various criminal offences, the circumstances of which were very similar to their own dealings with Company P. Mr and Mrs K also noticed that T had used a false name when quoting for the work on their property.

Believing they'd been the victim of an APP scam, Mr and Mrs K reported the situation to HSBC and asked for a refund. HSBC said that as Mr and Mrs K had received the goods and services they'd paid for (albeit they were unhappy with the quality), that this was a civil dispute between them and Company P, which meant HSBC wasn't responsible for refunding their payment.

Mr and Mrs K didn't agree and so they referred their complaint to this service. Our Investigator didn't uphold the complaint. They didn't think, from the available information, that sufficient evidence had been provided to say an APP scam had taken place. They noted that the work Company P had been paid to do had been completed and, whilst Mr and Mrs K weren't happy with the quality of the work, this wasn't sufficient to say an APP scam had taken place. Our Investigator pointed out that whilst T had been prosecuted for various criminal offences relating to his trading practices, he hadn't been found guilty of fraud.

Mr and Mrs K didn't agree. They said:

- they'd been unable to invoke their ten-year guarantee, making it worthless;
- the workmanship was poor – and possibly unnecessary;
- Trading Standards would've sought to criminally prosecute T if the claim had been made earlier and hadn't been time-barred;
- criminal offences had been committed by T, which he would've been aware of, having pleaded guilty to similar charges around the time Mr and Mrs K instructed Company P; and
- T and other workers for Company P have a history of this type of behaviour, as reported in regional newspaper articles.

As an agreement couldn't be reached, the complaint has been passed to me to decide.

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.

At the time Mr and Mrs K made the disputed payment, HSBC was signed up to the Lending Standards Board's Contingent Reimbursement Model Code ('the CRM Code'). The CRM Code provides additional protection from APP scams, but only in certain circumstances.

When HSBC received Mr and Mrs K's claim, it said it didn't think they'd been the victim of an APP scam, meaning it didn't need to reimburse them under the principles of the CRM Code because it didn't apply to their circumstances. For me to say that decision was wrong – and HSBC should've refunded Mr and Mrs K's payment in full – I'd first need to be satisfied that the CRM Code *is* a relevant consideration in the circumstances.

The CRM Code can only apply where the victim's payment meets the CRM Code's definition of an APP scam.

Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

“(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.”

DS2(2)(b) of the CRM Code says it doesn't apply to:

“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”

There's been no suggestion made that Mr and Mrs K were deceived into transferring their funds to a different person. So, DS1(2)(a)(i) doesn't apply in these circumstances.

To uphold Mr and Mrs K's complaint under DS1(2)(a)(ii) of the CRM Code, I'd need to be reasonably satisfied that it is *more likely than not* that Company P received their payment for a fraudulent purpose. So, I've carefully considered whether the evidence suggests that Company P was most likely the "*legitimate supplier*" of a service and whether Mr and Mrs K's payment meets the CRM Code definition of an APP scam.

The purpose of a payment forms part of the CRM Code definition of an APP scam. As such, the reason Mr and Mrs K made the payment is a relevant consideration when determining whether the CRM Code applies in these circumstances or not. For me to say the CRM Code applies in this case, I need convincing evidence to demonstrate Mr and Mrs K were dishonestly deceived about the very purpose of the payment they made.

At the time the payment was made, Mr and Mrs K had instructed Company P to replace their roof. They've argued that a roof replacement might not have been necessary, meaning they may have paid for goods and services that they didn't need. However, they were willing to pay £9,000 to have their roof replaced, which suggests that they had some concerns with their existing roof, which they considered needed to be rectified – and that they were satisfied with the work Company P appeared to have done on a nearby property.

It's not in dispute that Company P did carry out work on Mr and Mrs K's roof, which they appeared to be satisfied with until their neighbour's roof began leaking. What's in dispute is the quality of the work that was done. To my mind, that indicates that HSBC was correct to say this is a civil dispute between Mr and Mrs K and Company P, rather than an APP scam.

Mr and Mrs K have pointed towards a specific piece of legislation, which they say Trading Standards would've sought to prosecute T/Company P under, if Mr and Mrs K's claim had been raised at an earlier time. However, Trading Standards was time-barred from pursuing a claim when the matter was reported to it and so it was unable to pursue the matter further.

Mr and Mrs K referred specifically to the fact their cancellation rights weren't served correctly in the contract they signed with Company P. However, it's not for me to say whether the contract was enforceable or not, or whether Company P has committed a criminal offence under the legislation Mr and Mrs K have referred to – that would be a question for the courts to consider. Instead, my role here is to consider if HSBC fairly and reasonably should've refunded Mr and Mrs K in full under the CRM Code.

I appreciate T pleaded guilty to committing criminal offences which took place prior to his dealings with Mr and Mrs K and that there are similarities in his conduct when dealing with Mr and Mrs K. However, I haven't been provided with full details of which offences T was convicted of. There is information available online to show T has been accused of continuing to operate in a manner which I can't condone. However, I've seen no evidence to suggest T (or any other representatives of Company P) has been charged or found guilty of committing fraud.

I also appreciate that T used a false name throughout his dealings with Mr and Mrs K – and I can understand why they think this demonstrates he set out to scam them. Whilst I agree that this behaviour is concerning, I'm not persuaded it's sufficient to say T/Company P dishonestly deceived Mr and Mrs K about the very purpose of the payment they were making. The new roof Mr and Mrs K paid for was provided (albeit to an unsatisfactory standard) and so it seems the purpose of the payment was broadly in line with what they were led to believe.

I'm really sorry that Mr and Mrs K have paid for a roof replacement that they weren't satisfied with – and I acknowledge it's possible that the work they had done may not have been necessary or was overstated. I also appreciate they've incurred further expense in having to have the issues with their roof rectified, as a result of being unable to invoke Company P's ten-year guarantee for the work it did. I'm sure they were left frustrated and disappointed about this.

Whilst Mr and Mrs K feel very strongly that Company P has scammed them, I'm not satisfied that the CRM Code definition of an APP scam has been evidenced here. The evidence suggests that Mr and Mrs K have a contractual dispute with Company P, and they would need to pursue them directly for the loss they've suffered. As a result, I'm not persuaded HSBC was wrong to say this situation was a civil dispute and I don't find it needs to do anything to resolve the complaint.

My final decision

For the reasons explained above, 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 K and Mrs K to accept or reject my decision before 29 May 2025.

Liam Davies
Ombudsman