

The complaint

Mrs K complains that HSBC UK Bank Plc ('HSBC'), hasn't reimbursed the money she believes she lost to an authorised push payment ('APP') scam.

What happened

The details of this case are well-known to both parties, so I don't need to repeat them at length here.

In summary, Mrs K and her husband were looking to build accommodation for their daughter, an office and also some garages next to their house. They attended a well-known event show and came across a company, which I'll call 'Company H'. Company H sourced materials ('blocks') from a company based abroad, which I'll call Company I. Company H were the sole UK distributor of the blocks provided by Company I.

Mrs K decided to proceed with Company H. Mrs K provided drawings and the director of Company H whom I'll call Mr A, advised that he could build the shell and provided an approximate price. On 1 September 2022 Company H attended Mrs K's property to discuss the build and confirm the foundation system that would work with the build.

On 6 September 2022, Mrs K made a payment for the blocks and the foundation system. Mrs K paid £19,595.55 to Company H.

Mrs K received confirmation that her funds had been received, and the blocks would be placed on allocation. Mrs K intended to start the build in April 2023 and attended a training day on 9 March 2023 hosted by Company H which demonstrated how to build using Company I's blocks. Mrs K says that Mr A advised they were ready to start her build and that her blocks and foundation system were at his yard.

In early April 2023 Company H entered into voluntary liquidation and Mrs K never received her blocks or foundation system and she says they weren't in Company H's listed stockholding. As a result, Mrs K contacted Company I who advised it had no record of an order in her name. Mrs K also contacted the company who were to provide the foundation system – Company B, who also advised that no order had been placed.

Mrs K considered Mr A/Company H were taking orders with no intention of ever fulfilling them. Mrs K also discovered Company H attended another event show on 26 March 2023 and was taking orders just days prior to Company H entering voluntary liquidation. Mrs K considers Mr A was trying to maximise the amount of money in Company H before declaring voluntary liquidation. Mrs K considered she had therefore been the victim of a scam. Mrs K also pointed to the liquidator's findings and around Company H's accounting submissions which misrepresented Company H's financial stability.

Mrs K reported the matter to HSBC, who declined reimbursing her advising Mrs K needed to liaise with the liquidator. Unhappy, Mrs K referred the matter to our service. Mrs K provided detailed submissions of what had happened and why she considered she was the victim of a scam orchestrated by Company H and its director Mr A.

One of our Investigators reviewed the matter. At the time Mrs K made payments to Company H, HSBC were a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code. So, the Investigator considered whether the CRM Code was an applicable consideration in Mrs K's complaint. The CRM Code provided increased protection for customers who were the victims of APP scams. But the CRM Code didn't apply to every type of disputed payment. The CRM Code didn't apply to disputes that are deemed to be a 'civil dispute' between two parties. In short, the Investigator didn't uphold the complaint, as they considered the matter was a civil dispute – and therefore said the CRM Code didn't apply to the payments Mrs K had made. So, they didn't consider HSBC was liable to refund Mrs K.

Mrs K disagreed and has asked for an Ombudsman's review as the final stage of our process.

It should be noted at this point that throughout the course of this complaint, Mrs K has provided the initial report and updates from the liquidator. And she has also provided the latest update from the police investigation which states that two people have been arrested on suspicion of fraud, and they are currently released under investigation, with a file soon be sent to the Crown Prosecution Service to seek charges for fraud.

So, as the matter hasn't been resolved, it's 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.

Mrs K has made detailed submissions in support of her complaint. I would like to assure Mrs K that I've read and considered everything she's sent in. However, I don't intend to respond in similar detail. 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 acted fairly in its answering of the complaint that the matter is a civil dispute, and it is therefore not liable to reimburse her under the provisions of the CRM Code. 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.

I'm very sorry to hear of what's happened to Mrs K. She paid money in good faith to Company H but didn't receive the materials, and it's left her out of pocket as a result.

But having thought carefully about HSBC's actions, I don't uphold Mrs K's complaint. I do appreciate how disappointing this will be for her, but I don't think HSBC has acted unfairly in its answering of the complaint that the matter is a civil dispute and that it is therefore not liable to reimburse her under the CRM Code. I'll explain why.

The starting position in law is that Mrs K will generally be considered liable for authorised payments. It's accepted that she authorised the payments in dispute and so she is liable for them in the first instance. At the time Mrs K made the disputed payments, HSBC was a signatory of the CRM Code. The CRM Code provided additional protection from APP scams, but only in certain circumstances.

The CRM Code can only apply where the victim's payment meets the CRM Code 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.”

And 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 Mrs K was deceived into transferring her funds to a different person. So, DS1(2)(a)(i) doesn't apply in these circumstances.

To uphold 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 H received her payment for a fraudulent purpose. So, I've carefully considered whether the evidence suggests that Company H was most likely the “legitimate supplier” that had been paid for goods or whether 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 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'd need convincing evidence to demonstrate Mrs K was dishonestly deceived about the very purpose of the payment she made, and Company H induced Mrs K to make a payment with the intent to defraud her from the outset. It also means being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of Company H breaching a legitimate contract with Mrs K.

I've considered the evidence available, but I can't fairly conclude that Mrs K has been the victim of an APP scam in line with the above required definition. As a result, I'm not persuaded it was unfair or unreasonable for HSBC to conclude that Mrs K's situation is a civil dispute between her and Company H. This means HSBC isn't required to reimburse Mrs K under the provisions of the CRM Code. I know this outcome will come as a bitter disappointment to Mrs K, so I'll explain why.

According to Companies House, Company H was incorporated in February 2017. So it had been running for a number of years prior to Mrs K making payment to it. Company H also had employees and attended events and shows and carried out works over those years. I don't think there is a dispute that Company H weren't a legitimate supplier – but I think the crux of the matter is whether, quite possibly due to financial hardship as a result of financial mismanagement or otherwise, Company H's behaviour shifted and to such an extent that it was obtaining funds from customers without having any intent to provide the goods or services.

And, in the individual circumstances of this complaint, I don't think I can fairly conclude that that is the case here. I'll explain why.

I have given consideration to the liquidator's original report, and I have also considered the receiving bank statements (where Company H held its account) that have been provided. These bank statements were provided 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 receiving bank account activity – it suggests Company H was running in line with its purpose with payments to firms associated within that line of industry and wages being paid to employees up until the end of January 2023.

Importantly, I can see from September 2021 (so a year prior to Mrs K's payment) up until March 2023 (six months after Mrs K's payment) Company H paid Company I – the provider of the materials/blocks, on 37 occasions with the amount totalling approximately £433,000.

And I can also see that from September 2022 (when Mrs K made her payment) up until March 2023 Company H paid Company I on 11 occasions, totalling approximately £111,000. So, at the time Mrs K made her payments, Company H were making payments to Company I and continued to do so in the subsequent period after.

I also note that Company H paid Company B (the provider of the foundation system) on nine occasions over the course of a year totalling approximately £49,000.

I don't think that is the typical behaviour of a fraudster – whereby you would reasonably expect the funds to be misappropriated for personal gain with no intent to use the funds for the purpose in which they were obtained.

While I appreciate that Mrs K has said that Company I had confirmed that it didn't have an order placed in her name, I think, on the balance of probabilities, that that was always likely to be the case – given it was Company H ordering the materials from Company I. And that has been supported within the liquidator's report – that it is unclear what payments Company H paid to Company I were for which customers materials.

I do accept that Company B has also confirmed that it never received an order for Mrs K from Company H, and when you couple that with the mistruths Mr A provided Mrs K in advising her they were ready to start her build and that her blocks and foundation system were at his yard, I can certainly see why Mrs K considers she was the victim of a scam.

It seems clear to me that Company H were struggling financially. But Company H were still making payments to Company I throughout late 2022 – so after Mrs K had made her payment to it. So when considering the applicable test in this case, which is whether there was intent to take Mrs K's money and not use it for the purpose intended, I can't be as satisfied as I would need to be. I can't fairly say that Company H had no intention of trying to fulfil Mrs K's order when Company H were still making payments to Company I, and were still seemingly trying to operate and were paying wages.

I appreciate that the police are providing its submissions to the Crown Prosecution Service to seek charges for fraud – and that may ultimately shed further light on any potential wrongdoing and from what point. I also appreciate that Mrs K is currently in the process of trying to obtain the latest from the liquidator, which will likely include whether the Insolvency Service will seek to disqualify, or is in the process of disqualifying, Mr A from being a company director.

I therefore acknowledge that new material evidence or information may come to light such as the Crown Prosecution Service making a decision to proceed with charges for fraud. And I accept, as a result of any subsequent trial, that there could be findings which supports Mrs K's contention that Company H never intended to use her funds for the purpose for which she paid Company H. Should that happen, then Mrs K can provide that information to HSBC for it to reconsider her claim under the CRM Code.

Finally, I appreciate Mrs K had advised that another individual, in similar circumstances to her, has received reimbursement of their losses following our services' involvement. I can't comment on the outcome of other claims or complaints, and I can only consider the circumstances of the complaint before me when deciding what's fair. Here HSBC declined reimbursing Mrs K as it deemed the matter was a civil dispute and is something not covered by the provisions of the CRM Code. And my role is to determine whether HSBC acted fairly in reaching the outcome it did.

I have a great deal of sympathy for Mrs K. She paid Company H in good faith and didn't receive the materials or service she expected and has been left out of pocket. Company H seemingly had questionable business practices towards the end, providing mistruths to Mrs K, and it seemingly wasn't able to manage its finances. However, the test I have to apply in this case is whether Company H dishonestly deceived Mrs K into paying an amount for materials – with it having no intent from the outset to try and fulfil that order. I'm not persuaded there's sufficient evidence currently available to say Company H obtained Mrs K's payment for a fraudulent purpose. So, I can't say that HSBC acted unfairly or unreasonably in treating Mrs K's claim as a civil dispute between her and Company H.

I'm also satisfied that there wasn't anything else HSBC could have done to prevent the loss when Mrs K initially made the payments as I don't think it would have had any concerns that Mrs K's funds were at risk at the time. I also don't think HSBC could have done anything to recover any funds subsequently also given Company H went into voluntary liquidation.

Overall, I can't fairly hold HSBC responsible for Mrs K's loss.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 5 December 2025.

Matthew Horner
Ombudsman