

Complaint

Mr N is unhappy that HSBC UK Bank Plc hasn't reimbursed him after he reported falling victim to a rogue trader scam.

Background

Mr N wanted to complete a substantial extension to his home. Prior to the works commencing, the estimated costs were around £130,000. Once he was given planning permission, a building inspector was appointed. On the recommendation of the building inspector, Mr N engaged the services of a building company.

The company agreed to carry out all the stages of the works and to a demanding schedule. As I understand it, the director of the company visited Mr N's home on 26 September 2020. He said he'd bring a copy of the contract and wanted to be paid a deposit of £13,000 in cash. The director didn't bring a written contract with him but reassured Mr N that he would bring it the next time they met. Up until December 2020, Mr N made cash payments of £83,000 to the builder. He says that the builder threatened that he would abandon the project if Mr N didn't make further cash payments.

By late December, Mr N was unhappy that so little progress had been made. He told the builder that he refused to make any more cash payments but agreed to make several payments by bank transfer. In January and February 2021, Mr N paid £15,000 to the builder by bank transfer. Both the cash withdrawals and the bank transfers were paid from Mr N's account with HSBC.

Mr N says that the builder left the house in a terrible condition. Wiring was incomplete and exposed and the house was open to the elements. He had a brief interaction with the builder's partner about him returning to the site and finishing the job. This never happened. In May 2021, he contacted HSBC and told it he'd fallen victim to a scam. He also reported what had happened to the Trading Standards team at the local authority and the police. HSBC looked into things but decided Mr N wasn't the victim of fraud. In its view, this was a civil dispute and he ought to recover his losses through the courts.

In July 2021, a building surveyor inspected the property and reported on the works that had been undertaken. He wrote:

The stage payments paid roughly correlate with the various stages set down in the quotation provided by [the builder]. Payments totalling £98,000 were released which correlate with achieving Stage 14 of the works. The cost of works to complete after Stage 14 only amounts to £19,000 plus the retentions sums of £13,000.

However, it is clear that defective works aside, not all elements of every previous stage are complete. Even if the works in the various stages were fully complete the extent of work does not extend much beyond stage 7 which is a total of £63,000. Not forgetting that it includes a deposit amount of £13,000 which is not really allocated to any works.

[...]

From the site inspection and the additional information provided it is clear that money was claimed by [the builder] and not expended on the works.

It is apparent that given the extent of unfinished and outstanding works and the progress made on site by [the builder] that demands for further monies to complete the works within the stated time frames was never achievable.

There are numerous instances of poor and defective work and works not in accordance with the agreed schedule and specifications.

Mr N was unhappy with the response he'd received from HSBC and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. She agreed with HSBC's conclusion that this should be treated as a civil dispute.

Mr N disagreed with the Investigator's opinion. He said that the contents of the surveyor's reports supported his contention that he was a victim of fraud. He argued that the builder started work on the property before a contract had been agreed and so essentially forced Mr N to engage with him. He also pointed out that he wasn't on the site during this time, so although there's evidence he sent messages saying that he was happy with the work, this was always based on the commentary and the pictures supplied by the builder.

As Mr N disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There's no dispute here that Mr N authorised the payments to the company. Under the relevant legislation that means he's liable for those payments at first instance. However, good industry practice also required HSBC to be on the lookout for payments that were unusual or out of character with the aim of preventing customers from falling victim to fraud and scams. It's also a signatory to the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. In certain circumstances, that code can entitle a customer to be reimbursed by the bank after they've fallen victim to a scam.

However, before I consider whether any of those requirements come into play, I must first consider whether Mr N is a victim of fraud. The CRM Code is explicit that it doesn't apply to *"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services ... but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."*

This isn't a straightforward question to address. To be satisfied that Mr N fell victim to fraud, I'd need to be persuaded that the builder he hired had a settled intention to scam him. Obviously, I cannot know what was in the minds of the builder at the time they agreed to carry out these repairs. As a result, I must infer what their intentions were based on what the available evidence tells me.

Unfortunately, I'm not persuaded that the extremely poor quality of work evidenced in the surveyor's report necessarily proves fraud. It's at least as likely that the root cause was incompetence or maladministration. In such circumstances, Mr N may have a civil claim for

damages for breach of contract against the builder, but it wouldn't entitle him to have his losses reimbursed by the bank under the CRM Code.

Mr N reported the matter to the police, but the police have determined that that this is a civil matter. I can see that the first investigating officer was of a different view and appeared to be leaning towards treating this as fraudulent. He certainly wanted to interview the builder about what had happened. The file was then passed to a different officer who concluded that there was no evidence of a crime. At the very least, this demonstrates that the issue of whether the builder committed the crime of fraud was a finely balanced one.

Enquiries made with the receiving bank – i.e. the bank that operated the builder's bank accounts – do not suggest that the builder's operations are fraudulent. Mr N is the first person that they're aware of that has made an allegation of fraud against the builder in connection either with the builder's personal account or company account. On balance, if the builder were a fraudster, I think it's likely that there would be other victims and that at least one would've raised their concerns with their bank.

In addition, the company continues to trade and submitted its annual accounts to Companies House less than 6 months ago. It appears to have operated uneventfully for several years before this dispute with Mr N, which isn't consistent with what I'd expect if the builder had been a fraudster.

I've also looked at additional evidence submitted by Mr N that shows communications between him and the builder. In several of these, Mr N contends that the contractor made false statements about the works and that these persuaded him to make further transfers. Unfortunately, I don't find the examples he cites meet the threshold for fraud. For example, at one point the builder told Mr N the complete work would be "*bomb proof*". But in my view, this comment (and several others) was just the sort of exaggeration one might expect from a business as to the quality of their service and was not to be taken literally. It was certainly not a specific claim or promise that could form the basis of an allegation of fraud.

I'm enormously sympathetic to the position Mr N finds himself in. He has clearly been very badly let down by the builder and it's had a tremendously significant impact on his life. He's also out of pocket for a huge sum of money. But I'm afraid I don't think HSBC has acted unfairly in declining to reimburse him under the CRM Code. I think the proper avenue for him to pursue to get redress would be through the civil courts. It's worth noting that only a small fraction of his total losses would be recoverable under the CRM Code anyway, since it doesn't apply to cash withdrawals. But if Mr N were to take legal action, he could look to recover his total losses. It goes without saying he should seek independent legal advice before deciding what to do next.

Final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 14 December 2023.

James Kimmitt
Ombudsman