

## The complaint

Mr K complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

## What happened

In June 2023, Mr K was looking to get some building work done at his property and agreed for a builder to carry out the work. A schedule of work was agreed, setting out the work to be done and that payments would be made once certain phases of the work were completed. Mr K then made a number of payments from his HSBC account to the account details the builder gave him, and the builder started the work. I've set out the payments Mr K made below:

Date	Amount
7 June 2023	£600
7 June 2023	£2,650
19 July 2023	£14,278.52
20 July 2023	£22,639.50
1 September 2023	£19,389.50
12 September 2023	£2,000
12 September 2023	£342
2 October 2023	£342

Unfortunately, during this time Mr K noticed a number of issues with the work being done and that it wasn't progressing as quickly as he expected. And after the builder asked for another payment before the next phase of work was completed, Mr K refused to pay anything further until the issues were resolved. But the builder then didn't return to the property and the work wasn't completed.

Mr K then reported the payment he had made to HSBC as a scam. HSBC investigated but said the builder had done some of the agreed work so it felt this was a civil dispute between Mr K and the builder, rather than a scam. And so it didn't agree to refund the payments Mr K had made. Mr K wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence suggested the builder had set out to deceive Mr K from the beginning and thought it was likely the builder had intended to complete the work. So they didn't think this met the definition of a scam, or that HSBC should have to refund the payments Mr K had made. Mr K disagreed with our investigator, so the complaint has been passed to me.

## 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, I don't think it would be fair to require HSBC to refund the money Mr K paid the builder. I'll explain why below.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

HSBC is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

Mr K has mentioned other definitions of a scam. But, when assessing HSBC's obligations and responsibilities here, I think the relevant definition and test is the one I have set out here from the CRM code.

So in order to determine whether HSBC should refund the money Mr K lost under the CRM code, I need to consider whether he has been the victim of a scam – or, in other words, whether he was deceived about the purpose of the payments to the point where he and the builder intended different purposes for the payments and the builder set out from the beginning with the intent to defraud him.

I've thought very carefully about this, and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

From what Mr K has said, the builder started working at the property as agreed and appears to have been working there in some capacity for around six weeks. It also appears the builder carried out a significant amount of work, including stripping out, laying footings and foundations, and building walls – albeit to a poor standard. And the builder arranged for a number of contractors to work at the property.

But I'd usually expect a scammer to do as little work as possible in order to get the maximum possible profit in the shortest period of time. So the builder here appears to have done more work than I'd expect from someone who never intended to complete the work. The builder also continued working at the property for around a month after Mr K had paid the majority of the amount for the work, which I also wouldn't expect from someone who's intention was to take the money and never complete the work.

I appreciate that much of the agreed work at Mr K's property was left unfinished or done to such a poor standard that it has had to be re-done. But this, by itself, does not mean that he has been the victim of a scam as tradespeople can fail to complete work or complete work to a poor standard for a variety of reasons.

The bank the payments were sent to has also told us that it didn't have any concerns about the account at the time Mr K made the payments. And I've seen evidence relating to the account the payments were made to, which shows it appears to have been run as I would expect a legitimate tradesperson's account to have been and doesn't suggest it was being used to operate a scam at the time.

Mr K has said the builder used a false address and a different name than their legal name during his contact with them. And I recognise that this suggests the builder wasn't acting as I would usually expect a professional company to. But acting unprofessionally does not mean the builder was operating a scam. And I don't think any of these things necessarily mean the builder didn't intend to carry out the agreed work.

Mr K has also mentioned that a number of other people have lost money to this builder, and that the builder is currently being investigated by the police for fraud. But the outcome of this investigation, or of any subsequent action taken against the builder, is not yet known. If significant new evidence subsequently becomes available which suggests the builder was operating a scam, I would suggest Mr K raise this with HSBC directly. And I would expect HSBC to consider his claim in light of that new evidence. But, based on the evidence I have at the moment, I can't see that this investigation shows the builder was operating a scam here.

I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the builder here was attempting to operate as a legitimate business at the time and intended to complete the work, but that other factors ultimately meant the building work wasn't completed.

I don't think the evidence I've seen suggests the builder deceived Mr K about the purposes of the payments or set out from the beginning with the intent to defraud him. I think both Mr K and the builder's intentions for the payments were the same – to carry out the agreed work. So I don't think the circumstances here meet the definition of a scam from the CRM code.

And so I don't think the payments Mr K made to the builder are covered under the CRM code, or that HSBC should be required to refund the money he lost.

I sympathise with the position Mr K has found itself in, and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the builder. But I can only look at HSBC's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold HSBC responsible for the money he lost.

## **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 31 May 2024.

Alan Millward

**Ombudsman**