

The complaint

Mr A complains that he fell victim to a scam and says HSBC UK Bank Plc should reimburse the remaining loss.

What happened

Mr A found a new build property advertised for sale by a well-established local estate agent. He was interested in buying it as a buy to let investment. In March 2022, he paid the developer a £1,000 reservation fee for the plot. In addition to this, he paid the developer £2,500 for flooring that was due to be installed in the property.

The purchase fell through when Mr A decided not to proceed any further. He explains it came to light at a late stage that the development attracted a service charge. He was also concerned about the quality of the building work after visiting the site.

Mr A wanted the money back he'd paid. He pointed out the service charge had not been disclosed to him and that the floor he'd paid for had not been fitted. He's provided a recording of a conversation where he asked the developer to return the flooring materials and obtain a refund for them because he'd paid for something that he was not going to receive any benefit from. The developer did not return the materials and installed the flooring. Mr A says the developer then avoided him and would not answer any calls.

The estate agent reimbursed Mr A the £1,000 reservation fee he'd paid the developer, leaving him £2,500 out of pocket for the flooring. Mr A explains that the Police are investigating the developer for theft as he installed the flooring after agreeing a refund.

After seeking advice, Mr A contacted HSBC for help. The bank looked into the matter but declined Mr A's claim for a refund. In its final response, HSBC said it was not treating the matter as a scam and considered the payments are the subject of a civil dispute between Mr A and the developer. It paid Mr A £75 compensation to acknowledge there had been a delay in reviewing the case.

Mr A disagreed and referred the complaint to this service. He said it couldn't be a civil dispute as he'd been given a crime reference number. He explained solicitors said if the funds were not returned, this was a criminal offence.

One of our Investigators considered the matter, but she didn't agree that HSBC was responsible for refunding the remaining loss. She said Mr A had paid a legitimate company and the company not refunding what he'd paid after he pulled out of the property purchase wasn't the same as a fraud or a scam. She didn't think the developer had always intended to defraud Mr A of his money with no intention of selling him the property and she wasn't persuaded that failing to provide a refund showed that the developer had set out to scam Mr A from the outset.

Mr A disagreed. He pointed out the Police are investigating so this can't be a civil dispute. He suggested that HSBC should have some responsibility for managing money appropriately where criminal actions have taken place. He said that banks do refund scam

victims so he couldn't see how his circumstances were different. He explained he was struggling to see how one organisation could say it was a criminal offence and another organisation say it was a civil dispute. He said if the Police thought this was a civil case they would not have given the offence a crime reference number.

Our Investigator was not persuaded by Mr A's points and still felt the issue was a difference of agreement on how to settle matters outstanding from the breakdown of a sale. As no agreement could be reached, the complaint has been referred 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.

It's clear that Mr A has been through a very stressful time. From his perspective, he wasn't given the full facts about the property and he's spent money on flooring that is ultimately of no benefit to him. But I should be clear at the outset that I am only looking at whether HSBC has treated Mr A fairly. I am unable to make any finding as to whether the developer Mr A paid money to has done anything wrong.

There's no dispute here that at the time Mr A made the payments to the developer, he was happy with the arrangements. This means that the payments are authorised, and Mr A is considered liable for them at first instance. However, HSBC was under a range of other duties and obligations at the time. Broadly summarised, it was expected 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.

I've thought about whether HSBC has any obligation to refund the losses as a result of the CRM code that it has signed up to. But 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."

Mr A says that the developer has appropriated the flooring from him and has questioned why HSBC is not responsible for refunding him in those circumstances. But there is no obligation on the bank to refund Mr A because there's the potential for criminal charges in connection to the wider matter of whether the developer has stolen from him by installing the floor against Mr A's wishes. Not all cases where individuals have lost significant sums are in fact a scam. Whilst I can appreciate why Mr A feels aggrieved, there is a high legal threshold or burden of proof for fraud.

In order for me to conclude that the payments Mr A made were part of a scam and that HSBC should refund them, I'd need to be reasonably satisfied from the available evidence that the developer was not legitimate and had set out to defraud him from the outset. But I don't think, based on what I know, that I can safely conclude that.

Mr A visited the property in person and I've not seen any evidence to suggest it was not owned by the developer or that he was not prepared to sell it to Mr A. I am also not persuaded that the developer intentionally acted fraudulently by deliberately setting out to deceive Mr A at the time he requested the payment for the flooring. I am mindful the developer ordered the materials for the flooring, and they were delivered to the site.

Mr A has highlighted that he found the property advertised for sale with a legitimate, well established estate agent. If the developer had been intending to defraud purchasers, I think it is unlikely he would have chosen to list the properties for sale in this way.

Whilst I am unable to share details about a third party and the nature of their relationship with their bank, the evidence I've seen from the beneficiary bank regarding the way the developer's account ran indicates that the developer has carried out similar activities for some time without any other concerns being raised. If the developer was a rogue trader, I'd have expected other clients to have made similar allegations.

On balance, this situation doesn't display the hallmarks most typically associated with a scam. I can't safely say that this situation meets the high legal threshold and burden of proof for fraud. This is not to say that there is no issue at all between Mr A and the developer. Clearly there is. But this type of dispute isn't something that the CRM Code covers. So I don't think it was unfair for HSBC to take the view that it was unable to refund Mr A under the CRM Code.

In addition, HSBC doesn't have any duty or obligation to intervene in payments that are legitimate or to protect its customers from the impact of a bad deal. So, I can't fairly criticise HSBC for not doing more when Mr A made the payments. If HSBC had asked him about the payments at the time, it would not have uncovered anything that ought to have made it think Mr A was at risk of being a victim of financial harm from fraud.

I don't say any of this to downplay or diminish what Mr A has been through. He's told us how difficult things have been for him recently and I know he will be very disappointed by my decision. However, for the reasons I have explained, I'm satisfied Mr A isn't due a refund under the CRM Code. Nor can I see there are any other grounds on which I could say HSBC should, fairly and reasonably, have done more or that it should bear the responsibility for the remaining loss.

My final decision

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 A to accept or reject my decision before 1 August 2023.

Claire Marsh
Ombudsman