

Complaint

Mr C is unhappy that HSBC UK Bank Plc didn't reimburse him after he told it he'd fallen victim to a scam.

Background

In June 2023, Mr C hired a contractor (Mr K) to carry out repair works at his home. As I understand it, Mr K agreed to replaster and repaint the ceilings in two rooms, reinstall the electrical fittings and appliances disturbed by this work and repaint the walls. He paid the contractor a total of £2,100 divided up into two separate payments from his HSBC account.

Unfortunately, the quality of the work fell considerably below the standard one would expect of a professional. Mr C tells me that he was unhappy with a painter that the contractor sent to carry out part of the works. He asked Mr K to change and says that he responded by becoming verbally abusive. Eventually, the contractor abandoned the job. Mr C says that he left wiring exposed in places and damaged the handles on his kitchen windows. There were several other shortcomings with the work of the contractor which Mr C has detailed in email correspondence with us. He says he has attempted to get the builders to come back to his home to rectify the issues but that he's not been able to make contact with them.

Mr C told HSBC that he'd fallen victim to a scam. HSBC looked into things but didn't agree with him – it thought Mr C had a private civil dispute with the contractor and so it didn't agree to refund him. Mr C was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. Broadly speaking, she came to the same outcome as the bank.

Mr C disagreed with the Investigator's view and so 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.

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, that isn't the end of the story. HSBC is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This Code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

The Code defines 'APP scams' in the following way:

a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

- (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.*

The Code also specifically excludes certain types of dispute. It says:

“This Code does not 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.”

This means that HSBC isn't required to reimburse Mr C if the evidence doesn't show that it's more likely than not that he was the victim of fraud. To conclude that he was, I'd need to be persuaded that the contractor he hired had a settled intention to scam him. Obviously, I cannot know what was in the mind of the builder at the time they agreed to carry out these repairs. As a result, I must infer what his intentions were based on what the available evidence tells me.

Mr C has given us a detailed description of the shortcomings of the work, but I'm not persuaded that these are an indication that the contractor intended to scam him. It's at least as likely that the root cause was incompetence. In such circumstances, Mr C may have a civil claim for damages for breach of contract against Mr K, but it wouldn't entitle him to have his losses reimbursed by the bank under the CRM Code. I accept that Mr C has suffered a significant amount of stress here and has been let down badly. He appears to have had work carried out to a very low standard and this has left him needing to carry out remedial works. But disputes of this nature, in my view, belong in the civil, rather than criminal, courts.

Finally, Mr C has said that he told HSBC he was going to pay £2,100 in a single payment but instead he made two payments. He says HSBC should've been concerned by this, but I'm afraid I don't agree. I don't find it would've had any reasonable basis for thinking that this slight change was an indication that Mr C was at risk of fraud, so I don't think it did anything wrong by not intervening or questioning the payments with him.

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 C to accept or reject my decision before 21 December 2023.

James Kimmitt
Ombudsman