

The complaint

R (a limited company) has submitted a complaint against HSBC UK Bank Plc. It's represented by Mr T, one of its directors, and I'll mostly refer to him throughout this decision.

Mr T complains that HSBC hasn't refunded R after a contractor failed to complete works or supply goods that were paid for. Mr T believes R has been the victim of a scam, but HSBC has said the matter is a civil dispute.

What happened

I've kept the background to this complaint brief, as both parties are familiar with the circumstances.

Mr T engaged the services of a contractor, whom I'll refer to as Mr N. Mr N was to complete a range of works for the establishment of a new spa business. Mr T knew Mr N before contracting him for this project, having had him complete other building work to a satisfactory standard previously.

Mr T paid Mr N over £20,000 on R's behalf for the agreed works and associated materials, including kitchen units and tiles. Mr N started work on the project, but Mr T reports that progress was slow and there were repeated delays in the delivery of items that Mr N assured him had been ordered.

Mr T says Mr N kept making excuses for not completing the work and for the non-delivery of items. When Mr T investigated further, by contacting the suppliers, he found that most of the items that were supposed to have been ordered hadn't been, despite Mr N having been given the money to do so.

Mr T challenged Mr N and ultimately this resulted both signing an agreement that had been prepared by a solicitor. In summary, the agreement stated that Mr N agreed to repay all the money he'd received for goods that hadn't been ordered. He has, however, failed to repay Mr T and R.

Mr T reported Mr N to Trading Standards and told HSBC about what had happened, telling them R had been scammed.

HSBC considered the circumstances but felt the matter was a civil dispute between a customer (R) and a supplier (Mr N). Mr T disagreed and asked this service to investigate.

One of our investigators found HSBC had acted fairly and reasonably in delivering the response it did; he agreed the matter was a civil dispute, rather than a scam. He acknowledged that R had no doubt lost out financially and that Mr N had failed to deliver what was promised. But he didn't find the evidence pointed to Mr N having a deliberate intent to deceive and scam R from the outset.

Mr T didn't accept those findings and pointed to some of the key details: that goods had been invoiced and paid for but never ordered; that Mr N lied about suppliers delaying the delivery of those goods; and Mr N stopping work altogether once he'd been challenged and exposed.

The case has been passed to me for a final decision.

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.

I'm sorry to disappoint Mr T further, but I'm not upholding R's complaint, for broadly the same reasons as our investigator. I'm persuaded this is a civil matter between R and Mr N, rather than a scam that HSBC ought to bear the loss for.

That isn't to say that Mr N's treatment of R is fair or above board. There seems little doubt that an agreement has been broken and that R has lost out financially as a result. But it's not a loss I can say HSBC ought to refund. I'll explain why in more detail.

HSBC is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Broadly speaking, the Code is in place to see the victims of scams refunded by their bank. In setting out the scope of the Code it is stated:

DS2(2) This Code does not apply to:

(b) 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;

I know Mr T feels very strongly that Mr N has deliberately deceived R to obtain money. And it does seem clear that Mr N took R's money and failed to use it for the agreed purpose. But that's not enough for me to conclude that a scam has taken place. There are other possible explanations for Mr N failing to meet his obligations, including (but not limited to) him and his business falling into financial difficulty, as an example.

Mr N appears to have been a legitimate trader. He had carried out work for Mr T previously and Mr T had been happy with that work. But something seems to have gone wrong around the time Mr N took on the project for R.

This service has contacted relevant third parties, including Trading Standards. It's their view, having investigated Mr N in detail, that this wasn't a scam. Its review included the consideration of other claims against Mr N, alongside R's, and an examination of his financial records. That's a more in-depth investigation than this service has the power to carry out, in terms of looking at Mr N's actions and possible motives. So it's right that I place considerable weight on what it's told us.

I have also thought about the engagement Mr T had with Mr N over the course of their relationship. Mr T already knew Mr N before works started, with satisfactory work having been completed before. And he remained in regular contact with Mr N even after he'd become aware of – and raised his concerns about – Mr N's conduct with him, up until the relationship completely broke down. This even resulted in Mr N agreeing to meet and him signing an agreement that might be enforceable in court. These actions aren't, in my view, those of a deliberate scammer. I can see no reason why Mr N would have signed such an agreement if his intention had been to deceive and steal from the outset. I'm not persuaded that Mr N's further failure to honour the agreement establishes this matter as a scam either.

I do sympathise with the position Mr T and R are in. I don't doubt that this matter has had a significant impact on getting the new business venture off the ground. That inevitably comes with an impact on all the people connected to R who will have suffered because of Mr N's actions. But I'm satisfied that fair recourse for R lies somewhere else, and not with HSBC. I note that Mr T has already started looking at R's options here. And whilst those options appear perhaps more difficult, more formal, and more expensive to pursue, it also seems to me they seem the more appropriate route for R to recover its losses.

My final decision

I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 7 November 2023.

Ben Murray
Ombudsman