

## The complaint

Mr T is unhappy that HSBC UK Bank Plc have decided not to refund him after he says a builder scammed him out of money.

## What happened

Mr T employed the services of a builder who came recommended to him through an app, with endorsements from other people in his local area. The recommendations said the builder was very good and reliable.

Mr T made three payments to the builder in total: £3,000 on 30 September, £1,250 on 16 October and £1,000 on 23 October 2020. Mr T said the builder was due to start work on the 12 October 2020 and finish on the 2 November 2020. He says some work was completed as agreed but this was to a terrible standard. He says the builder then took money to complete a veranda and lay grass, but this wasn't started and believes these additional payments are therefore a scam. Mr T says the second and third payments should be treated as a scam because those payments were for the materials which were never received and work which wasn't completed. He also said the builder was terrible, lied and didn't turn up or stick to the deadlines. Mr T said the police were involved at one point because of the actions of the builder. In later correspondence Mr T also mentioned a summer house that was never completed, and this cost him an additional £8,000 to complete.

Mr T says the first payment was meant to be for £2,000 but the branch member of staff made a mistake and transferred £3,000. Mr T doesn't seem to have raised a complaint about this and there isn't any record of it in HSBC's notes either.

HSBC looked into things and said the matter was a civil dispute between Mr T and the builder and did not meet the definition of a scam for the purposes of the Contingent Reimbursement Model (CRM). It said the builder completed some work for Mr T, but this was not finished or to the standard he expected. And it said the receiving bank confirmed there had been no issues with the recipient's account, which also indicated it wasn't a scam. It suggested that Mr T contact Trading Standards and consider seeking advice from the Citizens Advice Bureau or a legal advisor. HSBC acknowledged it did provide poor customer service and Mr T was incorrectly told part of the money he lost would be refunded. It apologised for this incorrect information and offered £150 in compensation to Mr T. Unhappy with the response from HSBC, Mr T brought his complaint to our service. One of our investigators looked into things. He concluded that the evidence he had seen didn't persuade him this was a scam for the purposes of the CRM. He considered that the builder had completed some work after receiving the initial payment from Mr T. He thought it was more likely that the relationship had broken down and wasn't persuaded that the builder had set out to deliberately scam Mr T from the outset.

Mr T disagreed and in summary said:

- The investigator ought to listen to the calls between him and HSBC where it agreed he'd been the victim of a scam.
- HSBC offered compensation but never paid this to him.

- He isn't complaining about the first payment. This payment was for work started but not completed to a satisfactory standard and he is taking the builder to the small claims court for this.
- He had to call the police as the builder turned violent.
- His complaint only concerns the second and third payments where the work wasn't started, and the builder took the money under false pretenses.
- He didn't receive any deliveries or materials for these payments and has had to pay £8,000 to have some of the work completed.
- The builder is a con artist who scammed five other people. He's been reported to Trading Standards.
- Mr T has provided a request for a judgement against the builder for the sum of £10,920, dated February 2021.

The investigator in response to Mr T said:

- Because the builder completed some work it seemed more likely than not that he was a legitimate provider of goods. And that would be the case even if he turned out to be violent or provide a poor service.
- The second and third payments were a continuation of the first and considering the situation as a whole, he didn't feel this was a scam.

Ultimately, as Mr T didn't accept the investigators findings, so the complaint has been passed to me for consideration.

During the course of my investigation of the complaint I have also requested some additional information:

- We asked Mr T if he had an invoice or quote for the work to be completed by the builder. He has provided a partial screenshot of an email conversation which sets out at least some of work to be completed, but doesn't provide the price, timescale or any other details of the agreement.
- Mr T has provided a partial screenshot of a text message exchange between him and the builder – showing a payment was received by the builder and an agreed start date for the work. No other correspondence between Mr T and the builder has been provided.
- We asked if Mr T had contacted Trading Standards and if he had, could he provide the responses he received. He has provided some partial screenshots of emails with Barclays fraud department, Action Fraud UK, the Police, Companies House, and the Economic Crime Victim Care Unit. Included within this is a partial email where Mr T says he has contacted Trading Standards, but he hasn't provided any evidence of that contact or any responses he received.
- We asked Mr T more about the small claims court paperwork he provided. The claim amount was for over £10,000 which would potentially cover the losses he is also seeking from Barclays. In response Mr T said he is out of pocket because of the costs he's incurred for putting things right and finishing the work he had paid the builder to do. He hasn't given us an update on the progress of this court claim despite us asking.
- We asked Mr T if he did any research about the builder prior to using his services and he hasn't answered this question. He has said the builder was trading under a company name but was actually a sole trader. He also provided a partial email to Companies House that he sent some months after the payments – complaining about the builder trading under a "company name". The Companies House response said the builder wasn't using "Limited" or "Ltd" in its name so it wasn't in breach of any law. But it would write to the business to ask it to remove the registered company number it was using (as that company had been struck off).

- We also contacted the bank where Mr T's money was received. It has confirmed that there hadn't been any other reports of fraud relating to the account holder.

I considered the complaint and set out my provisional findings to both parties, asking them to respond with any further points or evidence for me to consider before I reviewed everything again and set out my final decision. Here is what I said in my provisional decision

*Having thought very carefully about HSBC's actions, I'm not intending to uphold Mr T's complaint. I do appreciate how disappointing this will be for him, but I don't think I can fairly say HSBC should reimburse him. I'll explain why.*

*I'm sorry to hear of what's happened to Mr T, and I can understand why he feels that his money should be returned to him. But not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam.*

*When considering what is fair and reasonable in this case, I've thought about the CRM Code which HSBC has signed up to and was in force at the time Mr T made these payments. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. I've thought about if the CRM code applies in the circumstances of the payment Mr T made and whether HSBC ought to reimburse him under the provisions of the Code. But the Code is quite explicit that it doesn't apply to all push payments. It says:*

*"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" Subsections (a) and (c) have been omitted as they are not relevant to this complaint.*

*Both the bank and our investigator felt the payments Mr T made, formed part of a buyer/seller dispute and, as such, are not covered by the Code. Mr T strongly disagrees. He feels the builder has scammed him.*

*Mr T says he entered into an agreement with the builder and this did not go as planned saying work wasn't carried out. But I can't safely say with any certainty, with what I know and what the evidence shows, that the builder set out with an intent to defraud him.*

*I'd start by saying there is very little evidence to support what was agreed between Mr T and the builder or how and when this relationship broke down. Mr T hasn't provided any correspondence between them, or sufficient evidence to show what work was done, or the quality of that work. He's provided invoices of work he says show he needed to employ others to complete the job, but I can't see that these support that the original builder didn't do the work as they appear cover different jobs to be done.*

*The partial screenshots show very little about what was agreed between the parties which makes it difficult to determine what the dispute actually is and certainly they don't persuade me that Mr T has been scammed. The lack of evidence about the events, persuades me this is a case of a dispute between the two parties instead.*

*There also appears to be a number of factors, in the circumstances of this case, that don't carry the typical hallmarks of a scam or of a trader setting out with an intent to defraud:*

- *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, regarding the beneficiary account, indicates that the builder's account was legitimate and had been established long before Mr T's payments were made. And the bank hasn't said it had any concerns about how the account was being operated prior to Mr T making his payments.*
- *The builder came recommended through a local social media app with at least two endorsements of his work from others living in Mr T's area. I wouldn't expect others to have*

*used the services of the builder and then recommend them if they had also been scammed. Mr T says others have been scammed by this builder, but he hasn't provided evidence to support this. And even if Mr T is able to provide evidence of others who are unhappy with the quality of the builders' work, this in and of itself, isn't enough for me to safely say there was an intent for the builder to defraud Mr T.*

- I understand that Mr T may have raised the matter with Trading Standards, but I've not seen any evidence from Mr T that there were ongoing investigations by them, or any other authority, which would lead me to safely conclude there was an intent to defraud.*
- Mr T says himself he isn't disputing the first payment he made to the builder as the work was completed but not to the standard required. And he has confirmed he believes this payment to be a civil dispute matter, which he is pursuing with the builder. I'm persuaded the second and third payments flow from the same agreement Mr T had with the builder and therefore it would be fair to treat this all as one matter.*
- I can see that a company used by the builder, with the builder's name as a linked individual, was struck off companies' house in 2019. This was in the year before Mr T used the builder's services. This is unusual but it doesn't persuade me the builder wasn't trading legitimately as a sole trader after this point or that he set out to defraud Mr T.*

*After taking everything into careful consideration, I'm persuaded this appears to be a case of a builder, potentially failing to honour an agreement, by not providing the work that the customer expected.*

*This being the case I'm satisfied the CRM Code doesn't apply. And I can't fairly ask HSBC to refund the money Mr T has lost, under the Code.*

*I don't think HSBC treated Mr T unfairly when it said the payments, he made were not covered by the CRM Code.*

*I've seen no other reason why HSBC ought to have prevented these payments or needs to refund Mr T here. I'll explain why. There's no dispute here that Mr T authorised these payments.*

*Because of this, HSBC had an obligation to follow Mr T's instructions. But it was possible for HSBC to stop the payments if it had reasonably been put on notice that the funds were being misappropriated. I've considered whether there was anything about the circumstances surrounding these payments that could have put HSBC on notice that Mr T might be at risk of financial harm and there isn't.*

*Mr T isn't disputing the first payment of £3,000 to the builder and the following payments are smaller in value and made by online transfer. Mr T had no reason to interact with the bank when making these two subsequent payments and I don't think the value would have caused HSBC to be concerned. Also, by this point the builder was an existing payee on the account and Mr T hadn't raised any concerns about the previous payment he'd made. And even if HSBC had intervened at the second or third payment, Mr T would've explained how he'd found the builder and the recommendations about him. And that he had already completed some work and was carrying out more. So, I'm satisfied HSBC, would have more likely than not, been satisfied Mr T wasn't at risk.*

*So overall, I'm not persuaded HSBC made any errors in processing these payments in line with Mr T's instructions or had any reason to intervene or prevent the payments in the first instance.*

*Mr T has also provided evidence to show he is intending to take the builder to a small claims court. That is the kind of civil action I'd expect in situations like this and supports my view that Mr T's circumstances ought not be treated as a scam. From the calculations he has submitted, in his request for judgement, it appears as though his losses for these transactions would be covered. So, this may be a more suitable option for Mr T to explore given my findings on his complaint against HSBC.*

*Customer service*

*Mr T has requested that we listen to the calls between him and HSBC where he says he was told he would receive a refund. HSBC hasn't been able to provide these to us. But I'm not persuaded they would change the outcome of this complaint. Mr T says he was told he would be receiving a refund and HSBC has admitted that a conversation along these lines did occur, confirming this was an error on its part. In consideration of that error it offered to pay £150 in compensation to Mr T.*

*Mr T believes this error means he should receive the refund he was promised. But the mistake by HSBC doesn't lead me to conclude the whole complaint should be upheld. I can see how being told he would receive a refund and then not would be frustrating, upsetting and confusing. I think the offer of compensation reflects that. But this doesn't distract from my findings that the complaint isn't one covered by the CRM and that HSBC didn't make any error in processing the payments in the first instance.*

*Mr T has said the offer of the £150 has been expressed by HSBC but never paid. I believe the offer is fair, so I recommend HSBC makes this payment to Mr T. But I don't recommend that it pays anything further.*

### **My provisional decision**

*I realise that my decision will be disappointing for Mr T and I don't underestimate the impact this matter has had on him. But overall, for the reasons I've explained I can't fairly or reasonably ask HSBC to refund the money Mr T says he has lost.*

*But I recommend that HSBC Bank UK Plc pays the £150 compensation it has already offered to Mr T.*

Mr T responded to say he didn't accept my provisional findings. In summary he said:

- He was extremely disappointed with the outcome
- He was disappointed that HSBC had not provided the call recording where it promised to refund him – he doesn't understand why the bank can agree something and then go back on their word
- HSBC actually offered him £250 not £150
- He would be willing to accept £1,125 in full and final settlement of his complaint
- He's provided all the documents and evidence that the builder scammed five other people.
- He is a victim on all of this and HSBC said it would give him his money back.
- This has caused him immense pressure, stress and anxiety.

I put Mr T's suggested settlement offer to HSBC and his comments about the £250 in compensation he thought he was promised. It responded to say it couldn't find any evidence that it offered the £250 and its decision remained the same.

I expressed HSBC's response to Mr T and said I would review the complaint again and his additional comments before issuing my final decision on his complaint.

### **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'm not minded to change my opinion, from that set out in my provisional decision.

Mr T hasn't provided me with any additional or different information to persuade me that this isn't a civil dispute. Therefore, I'm still satisfied this isn't an issue covered by the CRM and my reasons for this are set out in my provisional decision which is included above.

I know Mr T feels strongly that he should receive a refund on the basis that he was promised a partial refund, during a call with HSBC. As I said in my provisional findings, we haven't been able to obtain a copy of that call. But, as I've also said, I'm not persuaded that listening to the call would change the outcome of this complaint. HSBC has acknowledged it said part of the money would be refunded to Mr T and this was incorrect. As I've said this doesn't change the fact that the complaint isn't one that's covered by the contingent reimbursement model and I don't think HSBC needs to refund Mr T for his losses here. As such I'd only be looking to award compensation for the error HSBC made. And as I set out previously, I think the offer of £150 compensation to reflect this error is fair and reasonable in the circumstances.

### **My final decision**

HSBC needs to pay Mr T the £150 compensation. But I don't recommend that it pays anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 April 2022.

### **Ombudsman**