

The complaint

Mr P is unhappy about HSBC UK Bank Plc's ("HSBC") decision not to refund the money he paid for solar panels.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary Mr P instructed a business (I will refer to as T) to install solar panels on his property. Mr P paid an initial deposit of £2,400 on 28 September 2022. A second payment of £5,114.56 was made on 14 March 2023 in lieu of an installation date of 30 March 2023. The installation date was moved back a couple of times. Mr T asked for a refund from T. T went into administration in May 2023 and hasn't provided a refund. So Mr P complained to HSBC.

HSBC deemed the matter a civil dispute. Mr P says this was a scam and wants HSBC to refund him.

Our investigator did not uphold the complaint. She concluded this was a genuine company that went into financial difficulty and didn't think the company had set out with the intent to defraud Mr P but rather the business failed.

Mr P did not agree, so the case has been passed to me for a 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence. I'm sorry to hear about the situation Mr P has been left in. He has paid out a considerable sum of money, yet the work he paid for hasn't been completed.

It's clear that Mr P feels strongly that T has tricked him. From his perspective, T ultimately didn't turn up to install the solar panels. But I don't have the power to decide any dispute between Mr P and T. My role is limited to looking at whether HSBC has treated Mr P fairly.

HSBC didn't contract with Mr P for the solar panels he wanted fitted, and I can't hold it responsible for any breach of contract or other failings on T's part. As a starting point in law, Mr P is responsible for payments he has instructed HSBC to make. Unfortunately, there's little protection available to him for bank transfer payments, like these.

HSBC was under a range of other duties and obligations at the time, including 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 CRM Code. In certain circumstances, that Code can entitle a customer to be reimbursed by banks or building societies after they've fallen victim to an APP (authorised push payment) 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."

An APP scam is where a customer was deceived into making a payment to another person for what they thought were legitimate purposes but turned out to be fraudulent. In this context, that would mean that the very purpose for which T obtained the payments would need to be different to what Mr P believed it was for due to dishonest deception.

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

There is a high legal threshold or burden of proof for fraud. And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties for a dispute to exist. And unfortunately, businesses (such as T's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

All things considered I simply can't safely conclude that T took Mr P's money without ever having any intention of carrying out the work. The evidence available to me simply isn't enough to support such a finding.

It seems to me that T was more likely than not operating as a legitimate business. T was registered as a limited company on companies' house and had been incorporated since 2015 – operating successfully for a number of years. There is some indication from the third-party evidence that other factors ultimately caused the failure of T. From what Mr P has said, T came around to measure up for the solar panels. T may not have completed the job but that's not enough to say this was an APP scam.

I am aware there are ongoing investigations into T and the business is in the process of being wound up. Even if an investigation in relation to other matters might ultimately show the director of T is of poor character; it does not necessarily show that in relation to *the specific transactions carried out* in this particular case that they were made to an APP scam.

However, if those investigations result in any new or material evidence relevant to Mr P's claim then he can raise a new complaint with his bank at the time. But an on-going Police or Trading Standards investigation does not mean that an APP scam has been established.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say T took Mr P's money with a different purpose in mind or through dishonest deception. On that basis, I'm not satisfied that I can safely conclude that Mr P's payments meet the definition of an APP scam as per the CRM Code, therefore I can't fairly ask HSBC to refund him under the CRM Code.

I appreciate how frustrating and disappointing this answer will be. Mr P has lost a lot of money as a result of T's failure to install the solar panels. But I can't exclude the possibility that T entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't lead me to conclude it's more likely (than these alternative possibilities) that T intended to steal Mr P's money from the outset and never had any intention of fulfilling the arrangement in full or in part.

That means that I can't fairly hold HSBC responsible for the loss suffered here by Mr P. It also means I find that HSBC had no ability or obligation to try and recover Mr P's money. 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 P made the payments.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr P – I am sorry he has lost out through no fault of his own. But that fault lies with T, not with HSBC. Ultimately there is insufficient evidence to persuade me that the conclusion HSBC reached (to treat this as a civil dispute at the time and based on the evidence available) was unfair or unreasonable. And it's simply the case that I can't fairly tell HSBC to pay them the money Mr P has lost, because I don't think HSBC has treated him unfairly or was otherwise at fault here.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 August 2024.

Kathryn Milne
Ombudsman