

The complaint

Mr B complains that HSBC UK Bank Plc won't refund the money he lost to what he considers to be an authorised push payment ("APP") scam – his funds having been sent to an account held at HSBC.

Mr B has been represented by his wife in bringing this complaint, but for ease of reference, I'll refer to all submissions as being made by Mr B directly.

What happened

The background to this complaint is well known to both parties so I won't repeat it in detail here. But briefly, Mr B has explained that he was looking to get some renovation work completed on his home. After contacting a few firms, Mr B enlisted a building firm, which I'll refer to as 'M', to complete the work (ran by an individual I'll refer to as 'Mr H').

Work began in March 2022, and continued until around June 2022. During this time, Mr B made seven payments towards works, totalling over £40,000. In June, works to the property stopped – Mr H stating he needed to obtain a crane to continue. In July 2022, Mr H attended site and advised he was having cashflow issues, but that if Mr B could make a payment for £6,600, he would be able to continue. Mr B made this payment, but no further work was completed on his property. The company later went into liquidation in November 2022.

Mr B has since identified a number of other parties who have had similar experiences with M - and they now believe that before the business went into liquidation, it was being run with an intent to defraud. Mr B has said that he and other customers of M were directed to pay Mr H's personal account, rather than M's business account. Mr B states he has been led to believe that funds received to this personal account were swiftly removed to other accounts. He believes HSBC should've been concerned by this activity that there were potential money-laundering issues and investigated sooner. Mr B has also explained that by speaking to other customers of M, there appears to be a pattern of behaviour, that suggests an intent to deceive from the outset, rather than simply a business falling on hard financial times.

Believing he had fallen victim to a scam, Mr B contacted his bank, and also raised concerns about HSBC, where the receiving bank account was held. Mr B's bank, as well as HSBC are both signed up to the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code). The Code was set up to reduce the occurrence of APP scams, by setting out expectations and obligations for both the 'Sending Firm' and 'Receiving Firm' where payments are made by bank transfer.

HSBC considered its obligations under the CRM Code but didn't consider it was liable to provide any reimbursement to Mr B. It didn't think it had been established that Mr B had been the victim of an APP scam. Rather it thought this was a private civil dispute between Mr B and M.

Mr B disagreed and so referred the complaint to our service. An investigator considered the complaint. However, he didn't think the evidence pointed towards M having intended to scam

Mr B from the outset, with no intention of completing works agreed. He therefore didn't consider HSBC (or Mr B's own bank) was liable to refund any losses incurred.

Mr B disagreed with the investigator. He considers that vast amounts of funds entering and leaving Mr H's account ought to have triggered an investigation by HSBC for anti-money laundering.

As Mr B disagreed with the investigator's findings, the complaint has been referred 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 very sorry to hear of the position Mr B has been left in. He's paid a considerable amount of money for works that have been left incomplete – as well as sizeable costs for remedial works.

Neither the Police nor Trading Standards appear to have an active investigation against M, although I understand proceedings are being considered by the Official Receiver.

While I can understand Mr B's upset towards M, I'm not deciding a dispute between Mr B and M – I don't have the power to look into a complaint about M. Nor can I look into whether Action Fraud or Trading Standards should have taken action against M. My role is limited to deciding the dispute between Mr B and HSBC.

The CRM Code does provide some protection to victims of APP scams. But it specifically excludes private civil disputes.

There are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And unfortunately, businesses (such as M) 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.

Specifically, the CRM Code details that private civil disputes can include payments made to a legitimate supplier where the goods ordered, or services agreed, were not received. The CRM Code will not apply to payments that meet that definition.

Instead for a payment to be covered by the CRM Code, it must meet the definition of an APP Scam under the CRM Code. In this context, that would require that the very purpose for which M procured the payment was different to what Mr B believed due to dishonest deception.

Mr B believes that is specifically what happened here – that M requested payments from Mr B with no intention of completing the works promised. He considers this is evidenced by M requesting payments were made (by both Mr B and other customers) to the owner's personal account, rather than a business account – and then transferring these funds on to others.

Unfortunately, we'll never know with certainty what Mr H's intentions were – but before I can consider whether HSBC is liable for any of Mr B's losses, I'd first need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mr B and M. That also means

being able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of M breaching its legitimate contract with Mr B through financial mismanagement.

Or to put this another way, that means deciding whether the available evidence shows it is most likely that M set out to defraud Mr B with criminal intent. That is a high bar to meet.

Mr B accepts that M was, at least in the past, a legitimately run firm. M had completed works for others in the area and had been in business for a number of years, prior to its liquidation. However, it's Mr B's assertion that M at some point became aware it was heading towards liquidation and from that point onwards accepted payments without any intention of completing the proposed works. While, as I've mentioned, I'll never be certain of M's intent, in order to make a finding that HSBC can be held liable, I'd need to be satisfied that the evidence points towards this being the most likely outcome. While there are arguably questionable business practices here, I've also taken into account that M *did* do work on Mr B's property – and not an inconsiderable amount – and that work appears to have progressed from March until June when things came to a standstill. It's possible that M completed work to obtain further funds from Mr B – but it's also possible that M completed work while attempting to stay financially afloat, until this was no longer possible. All things considered, I simply can't safely conclude that M took Mr B's money without ever having any intention of carrying out the work. The evidence available to me simply isn't strong enough to support such a finding.

I understand that Mr B doesn't feel the investigator's view sufficiently covered his money laundering concerns. However, the investigator, like me, concluded that there wasn't sufficient evidence of a scam. When reaching this conclusion, the beneficiary account movements would have been factored into this decision.

I appreciate how frustrating and disappointing this answer will be. Mr B has lost a lot of money as a result of M's failure to complete the agreed work. But I can't exclude the possibility that M entered the agreement in good faith, intending to fulfil the work (as it appears it had done in the past) and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude, when weighing up these alternative possibilities, that it's more likely M intended to steal his money from the outset and never had any intent 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 B.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr B – I am sorry he has lost out through no fault of his own and suffered distress as the result from having a partially completed home. But that fault lies with M, not with the bank. And it's simply the case that I can't fairly tell HSBC to pay him the money he's 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 don't uphold Mr B's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 August 2024.

Kirsty Upton
Ombudsman