

The complaint

Mr N complains that HSBC UK Bank Plc ('HSBC') won't refund money he lost after falling victim to a rogue builder scam.

What happened

In 2020, Mr N bought a new property and needed some building work completed. Mr N says he selected the property with the help of an architect, who had been referred by a tradesperson that completed work on a family member's kitchen. The architect helped Mr N decide which property would be most appropriate based on the building work he'd want to do to it.

Mr N says the architect referred him to a builder, who I'll refer to as G. The architect told Mr N that G had completed work in the area, and after searching online Mr N found a profile on an online marketplace for G. Mr N says the profile included pictures of building work G had done and Mr N was satisfied with the quality. Mr N says G invited him around to his home, which was a substantial property that was finished to a high standard. G quoted for the work Mr N wanted completed, which totalled over £73,000.

Mr N made his first payment on 20 May 2021 for £15,000, which was to buy materials for the work to be completed.

The next payment was made on 9 June 2021 for £18,455, which Mr N says related to paving bricks being hand lifted, machinery brought to site and excavation work being carried out.

The third payment was made on 7 July 2021 for £25,000. G told Mr N that he was worried about impending material shortages due to Covid, and Mr N says he was aware of shortages in the previous summer of 2020. So, Mr N paid the funds for G to buy the material which he agreed to store for Mr N. At this time G also told Mr N that he had staffing shortages due to Covid.

On 21 July 2021, Mr N made a further payment of £7,000. Then the last payment of £625 was made on 26 August 2021. In total, Mr N paid G £66,080.

In July 2021, Mr N had concerns about delays and lack of progress and contacted the architect. Mr N was reassured that Covid was causing problems in all areas of building work. But Mr N asked G for a revised building schedule.

Ultimately G didn't complete the building work and stopped communicating with Mr N, and Mr N had to bring in another builder to complete the work. G refunded Mr N £2,000 in total, across two payments made on 12 and 19 November 2021.

Mr N says the only work completed by G included: some digging to get to the drains, replacing drainpipes, two thirds of the foundations being poured, work started on the under build and a bricklayer completed some work. However, Mr N says that there were problems with some of the work G had completed and six inches of the brickwork had to be cut off.

Mr N raised a fraud claim with HSBC and asked them to reimburse him for the money he'd paid to G.

HSBC are a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) and considered the claim under the code. But HSBC deemed the matter to be a civil dispute between the parties. As such, HSBC declined to refund Mr N the money he'd lost.

Mr N wasn't happy with HSBC's response, so he brought a complaint to our service.

An investigator looked into Mr N's complaint and upheld it, saying the evidence suggested that G had set out with the intention to deceive Mr N and didn't have any intention to complete the building work. The investigator recommended that HSBC refund £38,611.38 and pay interest on that refund at 8% per year. The investigator made a deduction based on the work that had been completed, and what Mr N had paid to the second builder who picked up the job.

Mr N agreed with the investigator's recommendation, but HSBC disagreed. HSBC say the payments form a civil dispute, for the following reasons:

- The level of work carried out is not consistent with a trader with no intentions of providing goods and services.
- Messages with G suggest that he was unwell which may've resulted in him failing to complete the work.
- It's unlikely that G would've invited Mr N to his home if he intended to scam him.
- HSBC haven't seen details of other complaints made about the same scammer, the full circumstances behind each complaint or the alleged police involvement.
- Mr N has been vague about the work completed and the issues experienced and hasn't provided full documentary evidence.
- G making two payments to Mr N isn't consistent with this being a scam.

As the case couldn't be resolved informally, it was passed to me to review.

Having reviewed the case, I intended to reach a different outcome than the investigator. So, I issued a provisional decision on 25 January 2024, sharing my reasoning with both parties and giving them the opportunity to respond.

My provisional decision

In my provisional decision I said:

I can only apply the CRM Code to Mr N's payments or consider HSBC's liability to him under the CRM Code, if I'm satisfied that the payments were made as part of an APP scam. As opposed to a situation where G didn't fulfil the contract with Mr N due to, for example, the business failing or ill health, which would be considered a civil dispute not covered by the CRM Code.

I've carefully considered all the reasons that Mr N believes he was the victim of an APP scam, however I'm not satisfied that I can safely reach that conclusion. I'll explain why.

I accept that G didn't complete the work they were contracted to do and that there were issues with the work they did complete. However, that isn't enough to say that G set out with the intention to defraud Mr N from the outset.

From what I've seen, and what Mr N has told us, G was a genuine builder who had been operating successfully for a number of years. This is supported by Mr N being referred to G by a local architect who told Mr N about the work G had completed and contracts he'd been given. Mr N also says that G had an online presence which included pictures of work that he'd previously completed. This suggests G was trading legitimately for a substantial period of time prior to Mr N making a payment.

I've seen third party information from G's bank, which I'm unable to share with Mr N, however that bank didn't have any concerns about the operation of the account at the time that Mr N made his payments.

Mr N has told that us that G did complete some work, although he's not satisfied with the quality of that work. The work included excavation, replacement of some drainpipes, foundation being poured, work started on the under build and some brick work. Also, that up until August 2021, G had tradespeople on site at Mr N's home doing work – at least periodically. I appreciate that work wasn't happening in line with the timeframes that Mr N expected or of satisfactory quality, however that fits the definition of a civil dispute under the CRM Code with regards to dissatisfaction with G as the supplier.

Having read the messages between Mr N and G (from July 2021 to December 2021), it's clear that there is a breakdown in the relationship, that G became unavailable and that he gave Mr N numerous excuses and reasons as to why the work wasn't moving at the pace Mr N expected. But the messages also suggest that G wasn't well.

Our service isn't able to require testimony or evidence from G, as we're informal and don't operate in the way courts would in obtaining evidence and testimony from all parties. So, it's possible, based on the information we have, that G may've suffered an illness which may've impacted on his ability to work and complete contracts. It's also possible that G may've experienced financial difficulties caused by Covid restrictions, which were in place during the time of Mr N's building work.

Mr N has referred to evidence from the police, however the matter hasn't been considered by a court. So, there is no information available about G's intentions at the time he took the payments from Mr N, or any judgement.

I accept that G may've been dishonest and hasn't completed agreed work as per the contract they had with Mr N. However, based on the evidence I've seen, I'm not satisfied that I can safely conclude that G took the money from Mr N with no intention of doing the work or that Mr N made a payment for what he believed was a legitimate purpose but in fact was fraudulent. On that basis, I'm not satisfied that Mr N's situation meets the bar to be considered an APP scam and means I can't hold HSBC liable under the CRM Code.

I've also thought about whether HSBC could've prevented Mr N's loss when he made the payments as there is an obligation on HSBC to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect HSBC to intervene and attempt to prevent losses for the customer.

But, even if HSBC had intervened, it wouldn't have made a difference in this case. I say this based on all the information that Mr N had at the time he made the payments. I think any questions HSBC could've asked if they had intervened, would've suggested that Mr N was dealing with a legitimate contractor. So, I'm not satisfied that HSBC missed an opportunity to intervene and prevent Mr N's loss or that they acted unreasonably in following Mr N's payment instructions.

My provisional decision was that I didn't intend to uphold this complaint.

Responses to my provisional decision

HSBC accepted my provisional decision.

However, Mr N provided new evidence from the police for me to consider.

The evidence from the police said:

- A case has been submitted to the Procurator Fiscal requesting a warrant to apprehend G.
- Once apprehended, G will be charged with a Fraudulent Scheme, as between August 2020 and December 2021 he used his company to obtain money from multiple persons throughout Scotland by signing contracts to provide extension/building work which was either started and never completed or work was never commenced.

Having considered the new evidence, I intended to change the outcome on this complaint. So, I issued a second provisional decision, giving both parties a chance to provide any further evidence or responses before I issued a final decision.

My second provisional decision

In my second provisional decision I said:

The police investigation has moved on significantly since I talked with them prior to issuing my last provisional decision. At that point, they hadn't confirmed charges would be made, a warrant hadn't been issued and they couldn't confirm what the charges would be if they were made. But the new evidence from the police suggests they have sufficient evidence to apprehend G and press charges.

Importantly, their investigation has shown that G operated a fraudulent scheme between August 2020 and December 2021, which covers the time period when Mr N made his payments to G.

Having carefully considered this new evidence, I'm satisfied that G didn't have the same purpose in mind for the funds as Mr N did, when the payments were made. I'm also satisfied that there is sufficient evidence to say it's more likely than not that G obtained the money from Mr N through dishonest deception. On that basis, I'm satisfied that Mr N's circumstances meet the definition of an APP scam as set out in the CRM Code, which means the payments are covered by the Code.

As I'm satisfied that Mr N's payments are covered by the CRM Code, I've gone to consider where HSBC is required to refund Mr N.

Is Mr N entitled to a refund under the CRM Code

HSBC are a signatory of the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code), which requires firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances. However, a bank may choose not to reimburse a customer if it can establish that an exception applies.

As HSBC haven't shown that an exception to reimbursement applies in Mr N's case, I'm satisfied that he is entitled to a refund.

But, for completeness, I'm satisfied that Mr N has a reasonable basis for believing G was legitimate, for the following reasons:

- G was referred to Mr N by an architect who had been engaged by Mr N in purchasing a home, so was trusted by Mr N. I think this would've reassured Mr N that G was legitimate.
- Mr N was invited to a home, which he was told was G's, and the work on that home was completed to a high standard, which reassured Mr N about the quality of G's work.
- The architect told Mr N that G was known in the area and completed a lot of work locally, which would've been reassuring.

Also, HSBC haven't provided any evidence that Mr G was provided with an effective warning when he made his payments, as required under the CRM Code. Based on the size of the payments, all of them except for the final payment should've had an effective warning.

So, based on the evidence, I'm not satisfied that an exception to reimbursement applies under the CRM Code.

Usually under the CRM Code, where no exception to reimbursement applies, a full refund would be paid to Mr N. However, in this case, Mr N has had the value of some of the work that G completed. So, I've taken into account the following points in deciding what is fair and reasonable redress in this case:

- The total that Mr N paid to G
- The work that Mr N has told us that G completed
- The evidence provided from the new builder that Mr N employed to finish the work including the work they've completed and the amount they've been paid
- The two credits that Mr N received from G for £2,000 in total

Based on the evidence, I intended to ask HSBC to refund Mr N £38,611.38 and pay simple interest on that refund at 8% per year, calculated from the date HSBC declined Mr N's claim under the CRM Code until the date of settlement.

My provisional decision was that I intended to uphold this 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.

Mr N responded to my provisional decision, accepting my recommendation.

HSBC responded disagreeing with the outcome I'd reached. They raised the following points:

- It's unclear why the new evidence from the police is sufficient for the case to be considered under the CRM Code, when it still hasn't been considered by a court.
- The circumstances of a number of the individuals who fell victim to G's scam appear to be significantly different to Mr N's circumstances. HSBC don't believe there is sufficient evidence in relation to Mr N's situation.

Having considered the new evidence provided by the Police, I'm satisfied that with warrants being issued for G's arrest and the Police confirmation of the charges that are being made against G, there is sufficient evidence to satisfy me that Mr N was the victim of an APP scam in line with the CRM Code.

In the calls I've had with the Police, they've been very clear that Mr N's case will be part of the charges that are being made, specifically in relation to work being done purely to entice the release of funds from Mr N, and that the Police are satisfied that G obtained the money from Mr N by dishonest deception. The Police say that any work completed by G was a ploy to get Mr N to continue to make payments and that G never had any intention of completing the work.

I appreciate that the case hasn't gone to court and there isn't a conviction, but I'm satisfied that there is sufficient information following the Police's investigation, to conclude that Mr N's payments are covered by the CRM Code.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

HSBC haven't evidenced that an exception to reimbursement applies. However, for completeness, I'm satisfied that Mr N did have a reasonable basis for believing G was legitimate when he made the payments based on the information that Mr N had available at the time of making the payments. This included G being referred to Mr N by an architect who had been engaged by Mr N in purchasing a property, and the assurances the architect gave Mr N about G's previous work and his profile locally. There wasn't any evidence or information available at the time that Mr N made the payments, that persuades me that he didn't have a reasonable basis for believing G was operating legitimately.

Also, HSBC haven't provided any evidence to show that Mr N was given an effective warning when he made the payments. Based on the size of the payments and Mr N's previous account use, HSBC should've provided an effective warning for all of the payments, except for the last payment.

As HSBC haven't evidenced that an exception to reimbursement applies, I'm satisfied that Mr N is entitled to a refund and am upholding his complaint under the CRM Code.

Usually, that would mean Mr N gets back 100% of the payments he's made as a result of the scam. However, in this case, Mr N did have the benefit of some of the work that G completed, so I'm not satisfied that I can fairly ask HSBC to refund him in full.

Taking into account the work that Mr N told us G completed, the invoices from the new builder who completed the job and the two credits Mr N received from G, I'm satisfied it's fair to ask HSBC to refund Mr N £38,611.38. HSBC should pay simple interest on that refund at 8% per year, calculated from the date HSBC declined Mr N's claim under the CRM Code until the date of settlement.

Putting things right

To put things right, HSBC UK Bank Plc should:

- Refund Mr N £38,611.38
- Pay interest on that refund at 8% simple interest per year, calculated from the date HSBC declined Mr N's claim to the date of settlement*

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr N how much it's taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against HSBC UK Bank Plc and require them to compensate Mr N as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 14 May 2024.

Lisa Lowe
Ombudsman