

## **Complaint**

Miss D is unhappy that HSBC UK Bank Plc didn't refund her after she told it she'd fallen victim to a scam.

## **Background**

The background to this complaint is well known to the parties, so I don't think it's necessary to set it out in full here. To summarise, Miss D wanted to have her driveway paved. A local builder was working at her neighbour's property. She asked him for a quote. He quoted £6,000 for the job and asked that Miss D pay for materials up front. Miss D used her HSBC account to transfer £4,100 to cover the cost of the materials. She didn't transfer this to the builder's account. He asked, instead, that it be transferred to his partner's bank account.

The builder was supposed to start work shortly afterwards and Miss D had been assured that the builder would order the materials the following day. In practice, no materials were delivered to Miss D's address and the works never started. Initially, the builder told Miss D that a family bereavement meant that all of his jobs were delayed. Eventually, Miss D wasn't happy to continue waiting. She asked for a refund. The builder told her that the materials could be returned to the supplier, but a significant penalty would be applied. He offered to start the job straightaway, but Miss D wasn't happy to go ahead anymore. She said she wanted to cancel the agreement outright.

The builder and Miss D negotiated a repayment plan. Miss D said she would be willing to accept a repayment of £1,000 per month. She also asked, based on the advice of her solicitor, that the payments be made from the partner's account, rather than any other bank account. However, the builder said that his partner's account was now subject to restrictions because of the fraud report that Miss D had made. He offered to make repayments from his own account but said that he couldn't afford to pay the full amount. He offered to repay £500. Miss D was frustrated by everything she'd been through up until that point. She didn't want to negotiate with the builder anymore and so she didn't respond to his messages.

Miss D complained to HSBC that she'd been the victim of a rogue trader scam. It looked into things, but it didn't agree to refund her. She was unhappy with that and so she referred her complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator looked at whether this payment was covered by the Contingent Reimbursement Model ("CRM") Code. This is a voluntary code which HSBC is signed up to which says firms should refund customers who are the victims of scams in certain circumstances. However, the Code specifically doesn't cover private civil disputes. In the Investigator's view, Miss D had a civil dispute with the builder, but there wasn't enough evidence to say that she was the victim of a scam.

Miss D was unhappy with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. HSBC is a signatory to the CRM Code. Where a payment was made as the result of an authorised push payment ("APP") scam, the CRM Code can provide some additional protection to customers. However, it specifically doesn't cover private civil disputes.

It's important to note that there are a number of potential reasons (other than an APP scam) for a contractor to have failed to perform a contract or provide a full refund when they said they would. That might happen where a business has run into serious financial problems or is failing for some reason. Unfortunately, businesses can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. That doesn't necessarily demonstrate an intention to commit fraud (which is what is needed to show that the CRM Code should apply). Instead for a payment to be covered by the CRM Code, it must meet the Code's definition of an APP Scam. In this context, that would require that the purpose for which the builder procured the payment was different to what Miss D believed due to dishonest deception.

The key factor is what the builder's intentions were at the time of the payment. I obviously can't know what was in his mind at the time, and so I have to infer what his intentions most likely were from what the other available evidence shows. That evidence needs to be strong enough to show this was a deliberate criminal scam from the outset. It also means I need to be able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of the builder breaching his legitimate contract with Miss D or failing to fulfil its promises for a legitimate reason. Put another way, I need to decide whether the available evidence shows it is most likely that the builder set out to defraud Miss D with criminal intent. That is a high bar to meet.

I've considered this carefully and I'm not persuaded that the evidence is strong enough to say Miss D is the victim of a scam here. I can see that the builder appeared to be operating legitimately on Miss D's neighbour's home. I understand the neighbour vouched for the builder and said that he was reliable. It seems unlikely that the builder would've legitimately carried out their agreement with the neighbour but, at the same time, intended to defraud Miss D further down the line.

I understand the builder told Miss D that he stopped work on all of his contracts temporarily following a family bereavement. A knock-on effect of that was that there was a significant delay in starting the works at Miss D's home. While this is unfortunate in respect of its impact on Miss D, it doesn't seem like an indication that the builder didn't intend to start the work on Miss D's home at a later date.

It's also significant that the builder was willing to negotiate a repayment plan with Miss D and, although he was seemingly unable to keep to its original terms, he was nevertheless making an effort to make some repayments. If the builder had the settle intention to defraud her at the outset, it's not clear to me why he would be willing to negotiate the return of those funds later. From the cases we see, this isn't in keeping with the way scammers operate.

While Miss D strongly feels that she was the victim of a scam, the available evidence doesn't support that as the most likely explanation for what's happened. However, I simply can't exclude the possibility that the builder entered into the agreement in good faith, intending to fulfil the work and then was unable to fulfil the agreement for a legitimate reason. That could include either the family bereavement, taking on too much work at once or mismanaging the

business. It could be for any number of other reasons – but this doesn't show it was most likely a criminal act.

I don't say any of this to downplay or diminish what Miss D has been through. I have a great deal of sympathy for her and the position she's found herself in. However, my role is limited to looking at the actions and/or inactions of the bank, and I'm satisfied it didn't do anything wrong here.

### **Final decision**

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 26 July 2024.

James Kimmitt  
**Ombudsman**