

The complaint

On 2 June 2021, Mrs S made a payment of £5,000 from her account with HSBC UK Bank Plc ('HSBC') in connection with an investment opportunity which she now considers to be a scam. She complains that HSBC won't refund the money she lost to an authorised push payment ("APP") scam.

Third parties

Several third parties feature in the events I shall describe. I don't need to identify them by their names, and I shall refer to them as follows:

B – a licensed and regulated producer of cannabis for medicinal use in the overseas jurisdiction.

P – a lighting technology company incorporated in the UK in September 2017. Currently in liquidation. P acquired a 20% stake in B and told investors it sought funding to provide proprietary plasma lighting to B for the cultivation of cannabis on a site in the overseas jurisdiction that P had leased ("the project"). My reference to P also includes linked companies that were incorporated in the UK to take on different roles in the project.

C1 – a company set up by P in the overseas jurisdiction to manage the leased site.

X – the main director of P. Made bankrupt for the first time in July 2017. Discharged 12 months later. Made bankrupt for a second time in September 2023.

K – a lighting technology company that X was a director of between 2009 and 2016. It went into administration in February 2020.

H – a third-party UK-based pharmaceutical company licensed to cultivate medical-grade cannabis in the UK.

P1 – incorporated in August 2021 by the directors of P, P1 was set up to supply P's proprietary lighting equipment to H.

What happened

Mrs S says in 2021 she was introduced to P as a potential investment through a friend. The proposed investment was to loan funds to P for the project in return for acquisition of shares. P would repay the loan after a minimum term of 12 months.

Mrs S says she spoke to her friend – whom I'll refer to as C, in detail about the potential investment which included discussions about the pros and cons of investing. She says C is an independent financial advisor – who had also already invested significantly in P alongside other successful businessmen. Mrs S had a longstanding friendship with C for many years and 100% trusted his judgement and integrity.

Prior to investing, Mrs S was provided with brochures and projections. She said they looked professional and at that point had no concerns about its legitimacy. They were detailed and forecasted returns from her initial £5,000 investment. Mrs S also received a loan agreement with P confirming repayment would be made in May 2022.

Mrs S confirmed the £5,000 investment into P was done so jointly with her sister. And although the payment was made from Mrs S' account with HSBC and the loan agreement with P was in Mrs S' name only, her sister contributed 50% (£2,500) towards the investment. Mrs S advised her sister works as a credit controller and they carried out checks on Companies House and everything checked out with P. Mrs S also advised her partner knew of X through joint personal interests in the field of motor racing.

In November 2021, Mrs S alongside other shareholders received an update from P on progress. P also provided a further opportunity for investment. As a result Mrs S made a decision to extend the original £5,000 loan to P for an additional year for which she would receive additional shares in return at maturity.

By May 2022, P contacted shareholders about challenges it had faced with raising sufficient funding and it therefore had to consider an offer of funding from potential new owners. It explained what this would mean to existing shareholders and what options were available to them. The expectation was that Mrs S' loan would be repaid and she would also receive a payment for the purchase of her shares.

Mrs S said that P then contacted investors about delays to repayment. But concerns began to arise among other investors. And by November 2022 those concerns resulted in a belief P was a scam.

On 17 November 2022, Mrs S raised a claim with HSBC she had fallen victim to an investment scam perpetrated by P.

That same day HSBC declined Mrs S's claim for reimbursement and issued her an outcome letter. In summary it explained:

- Based on the information provided, she has been the victim of an authorised push payment scam.
- Her case meets the Contingent Reimbursement Model (CRM) criteria for which they are obliged to assess whether the parties involved in the payment met the standards of care described within the Code.
- HSBC and the beneficiary bank both had sufficient fraud prevention measures in place
- But Mrs S could have taken more responsibility and conducted more checks prior to making the payment.
- Mrs S didn't do any independent research to check if the person/company was genuine and not cloned.
- Before completing the payment, she was provided with a warning which highlighted the risk and the steps she should take to avoid becoming the victim of a Scam.

Mrs S subsequently complained about HSBC's decision. She was issued with a final response letter rejecting her complaint for mostly the same reasons it had previously explained, before bringing it to this service.

Our investigator considered all the relevant information available to them and concluded HSBC should provide Mrs S with a full refund along with interest. In summary, she said that:

- Mrs S had a reasonable basis for believing she was making a genuine payment

- The scam was sophisticated and elaborate, with numerous people investing, so it could be seen why Mrs S genuinely believed it to be a legitimate opportunity.
- Mrs S received ample documentation and paperwork which looked professional, genuine and above board
- Mrs S also knew others who had already invested in P including C.
- Whilst HSBC had provided evidence of their in branch payment procedures, she wasn't satisfied Mrs S was appropriately probed nor that an effective warning was provided

Mrs S accepted the investigator's findings, but HSBC didn't. In summary, it said that:

- The investigators opinion was given on the basis the CRM Code applies, but the opinion didn't set out the requirements for the CRM Code to apply.
- It must be concluded the CRM Code applied to the payment otherwise it can't be held to have acted in error when Mrs S made the payment.
- They aren't satisfied Mrs S's circumstances meet the definition of an 'APP Scam' rather they would amount to a civil dispute.
- Features of the investment opportunity with P suggest this should properly be classed as a civil dispute. They aren't satisfied this was a scam within the meaning of the CRM Code.
- There is an ongoing police investigation which is likely to reach conclusions that are directly relevant to this complaint. And so they now seek to rely on an exception within the CRM Code - R3(1)(c), which allows them to wait for the outcome of the police investigation before making a decision.

In response to HSBC, our investigator explained:

- HSBC had already reached an outcome on Mrs S's claim under the CRM Code when it was first raised. Therefore they could not now look to rely on the R3(1)(c).
- With the available evidence, her findings remained the same despite the additional points raised.
- She remained satisfied Mrs S had a reasonable basis for believing she was making a genuine payment and couldn't agree HSBC provided an effective warning.
- Mrs S's claim has been considered under the CRM Code and based on everything seen, she's satisfied HSBC should provide her with a full refund along with interest.

HSBC continued to disagree. It remained of the opinion that given the ongoing police investigation, they didn't accept there was sufficient evidence that P was operating a scam. It requested the determination to be paused, pending the outcome of the police investigation. That's because it might reasonably inform whether the CRM Code is applicable. HSBC don't accept any refunds should be provided at this stage.

As an agreement couldn't be reached on the resolution of Mrs S's complaint, it's now been passed to a decision.

I issued my provisional decision on 11 July 2025. In this, I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what is fair and reasonable, I'm required to take into account: the 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 relevant time.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code

The CRM Code was voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. HSBC was a signatory to the CRM Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meets the CRM Code's definition of an APP scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:

"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulations 67 of the PSRs, where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

DS2(2) of the CRM Code says:

This Code does not apply to:

*...
(b) private civil disputes, such as where the 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;"*

The CRM Code doesn't provide a definition for "fraudulent" purposes. Therefore, it ought to get its natural meaning in the context in which it is being used. Having thought carefully about that, I'm satisfied that the CRM Code is intended for customers to be reimbursed where they have been dishonestly deceived as to the purpose for which their payment was being obtained.

Section DS2(2) makes it clear that "private civil disputes" between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. This shows that a dispute which could only be pursued in the civil courts as a private claim isn't an APP Scam. To

take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

That doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). Indeed, I understand that the CRM Code's publisher, the Lending Standards Board, has provided guidance that the criminal standard isn't required. In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases.

However, at the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I would need to see evidence that convinces me, it's more likely than not, that a criminal fraud has occurred, and therefore that Mrs S has lost her money to an APP scam.

If I conclude, on the balance of probabilities, that the payment in question meets the definition of an APP scam, as defined above, then Mrs S would be entitled to reimbursement unless HSBC is able to show that any of the CRM Code's exceptions at section R2(1) apply.

Can HSBC delay making a decision under the CRM Code?

At the time of reviewing Mrs S scam claim, HSBC concluded she had been the victim of an authorised push payment scam and that her case met the requirements of the CRM Code. But essentially HSBC rejected her claim on the grounds that it had met its requirements under the code, but Mrs S didn't.

However, it was only when our investigator issued their findings that HSBC's position changed. The bank then said it wasn't satisfied Mrs S's circumstances meet the definition of an 'APP Scam' rather they would amount to a civil dispute. And they would now seek to rely on an exception within the CRM Code – R3(1)(c) due to the ongoing police investigation, before making a decision. But it provided no explanation for why it no longer believed its customer had been scammed.

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision, as HSBC did in this case when initially rejecting Mrs S claim – then R3(1)(c) has no further application.*
- The Financial Ombudsman Services does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP rules, for our service to decide their complaint.*

What this means is that the R3(1)(c) provision only applies before the firm has made its decision under the CRM Code.

*HSBC can't seek to delay a decision it's already made. It's clear from the bank's file submission that it responded to Mrs S's claim for reimbursement by refusing it when issuing its letter dated 17 November 2022 – the details for which I've set out in the **what happened** section of my decision. As a result, R3(1)(c) was no longer an option by the time Mrs S made a complaint.*

So, although HSBC says there is an ongoing police investigation which is likely to reach conclusions that are directly relevant to this complaint, as it has already made its decision under the CRM Code the bank can't now rely on this provision.

Is it appropriate to determine Mrs S's complaint now?

Nevertheless, I do think it's right that I should consider whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still on-going although its progress is unknown. And I also understand that the liquidator's enquiries are continuing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues based on evidence already available. And it may be that investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be of little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

A police investigation has been ongoing for some time now, but for the reasons given above, I remain satisfied that I don't need to await the outcome of that investigation to make a fair and reasonable determination of this complaint.

In order to determine Mrs S's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mrs S was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mrs S first raised her claim with HSBC at the end of 2022 before bringing her complaint to this service in early 2023, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mrs S an answer for an unspecified length of time would be appropriate unless the delay is truly required for the sake of fairness to both parties. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware that P is under liquidation. This might result in some recoveries for P's creditors, or even theoretically its shareholders. It's unlikely that victims of this

scheme (as unsecured debtors) would get anything substantive if there are secured creditors, given recoveries would initially be for any secured creditors. That said, in order to avoid the risk of double recovery, I think HSBC would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mrs S under the liquidation process in respect of this £5,000 investment before paying anything I might award to her on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of a statutory body investigation for me fairly to reach a decision on whether HSBC should reimburse Mrs S under the provisions of the CRM Code.

Has Mrs S been the victim of an APP scam, as defined in the CRM Code?

As referenced above, HSBC was a signatory to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a payment made for a genuine investment that subsequently failed.

As there's no dispute that Mrs S's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, Mrs S must have transferred funds to P for what she believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

I've therefore considered whether or not Mrs S's intended purpose for the payment was legitimate, whether or not the intended purposes of Mrs S and P were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of P.

Mrs S lent £5,000 to P in May 2021 which she believed would be used for funding its project. She understood her loan would be repaid after 12 months. In return she also understood she had acquired 1,000 shares in P. Mrs S was introduced to the potential investment through a friend – whom she said is an independent financial advisor – who had also already invested significantly in P alongside other successful businessmen. Mrs S had a longstanding friendship with C for many years and 100% trusted his judgement and integrity. Nevertheless, prior to investing Mrs S was provided with brochures and projections which looked professional. She also received a loan agreement with P. I'm satisfied that at the time of making her payment to P, Mrs S fully believed that it was for a legitimate purpose.

I've then considered whether there is convincing evidence to demonstrate that P's purpose of the payment was fraudulent. That is, whether P's purpose must have been to misappropriate Mrs S's funds or otherwise deprive her of her money, rather than to use it for the purpose believed by Mrs S.

I've carefully reviewed the liquidator's findings. The following observations they've made are of particular relevance to this complaint:

- following P's incorporation in September 2017, while an undischarged bankrupt, X acted as a de facto director of P and promoted the company as a successor to K. X was appointed a director of P in June 2018, prior to his discharge from bankruptcy. As an undischarged bankrupt, X was prevented from being involved in the formation or management of any company.
- Between September 2017 and July 2018, when X was an undischarged bankrupt, nearly 34% of the investor's money was drawn out by X via another company he was a director of, or to his personal account, or otherwise applied towards lifestyle spend.
- Between March 2018 and July 2019, X made rental payments every month in respect of the property he and his family were living in. And between September 2018 and September 2019, nearly 32% of investments into P were applied towards purchasing that property.
- Between January 2020 and April 2020, repayments to investors were made which were drawn from new investor funds. The pattern of using new investor funds to repay historic investors continued subsequently.
- although the company records and financial records do provide some evidence of legitimate business spending, no evidence of any technology has been provided. No technology or intellectual property has been located.

Given the substantial size of these payments, the fact that they preceded Mrs S's investments, and X's misconduct as a bankrupt, I consider this is powerful evidence that P's true role was to dishonestly raise money from investors in order to fund X's lifestyle and make repayments to earlier investors.

I've also seen email evidence from another investor of P which shows one of the former directors of B stating it had significant funding problems with P, from as early as November 2019. The email goes on to say that by that point, B had used all its capital and had committed \$2.5 million. It no longer controlled the land and had difficulties raising additional funds. Although P promised to lend it \$1 million, that funding never arrived. The site was left in a state of disrepair, and B in ruins. B's former director concludes the email by saying he believes that P was set up as an investment fraud, given the initial contract signed by both parties for the project was never funded.

A review of bank statements of P's account from the relevant time supports B's claim that the promised sum wasn't sent. From what I've seen, I can only identify around £83,000 being sent to B during the relevant period.

This leads me to conclude that P had no intention – by the time of Mrs S's payment – to fulfil its obligations to B in relation to the project, and therefore it also had no intention to use Mrs S's funds as it had led her to believe it would. Instead, based on what the liquidator has noted, it appears that Mr S's funds were used largely for X's personal benefit and repayments to earlier investors.

I've also seen evidence of an email from another investor which was received from the general manager of the company that P, through C1, engaged with in 2018 to carry out construction at the leased site. The email states that the said company experienced multiple delays in receiving payments, and in early 2021 it was asked to stop all work immediately and leave the site. At the time, construction hadn't finished, and the site didn't have electricity or water. The general manager also states that to his knowledge, the site has never had any grow lights installed, nor grown cannabis.

An email from B's former director to another investor corroborates that evidence, stating that lighting was never provided, nor cannabis grown on the site.

The information provided by the third parties which I've mentioned above is completely at odds with the letter P sent to shareholders in November 2021 which included 'sensitive' images of the 'up and running' facility, one of which purported to show the cannabis flower cultivation grow room. It's alleged by another investor these images were taken from third-party websites, and links have been provided in support of this. I've reviewed these website links, and I find that they do support this allegation. While P's newsletter was written after Mrs S made her investment, I do consider it relevant to the extent that it provides evidence of P's willingness to deceive investors about the use of their funding.

Further (again subsequent) evidence of X's dishonest business practices has been provided to me. I understand that in 2021, P agreed to make a payment of £2.5 million to H for the deal it had entered into – through P1 – to supply P's proprietary lighting in return for a percentage of H's revenue. When the funds didn't arrive, X claimed to have sent it and provided a screen shot of the payment confirmation to evidence this. I've seen a copy of the payment confirmation screen. I've also reviewed the bank statement of the account that money was alleged to have been sent from. Having done so, I can't see the payment in question leaving the account.

Moreover, the account balance on the day in question stood at around £80,000. So, it's unclear how P could have made a payment of £2.5 million to H. I've seen an email from the police to another investor where they have confirmed that none of the accounts held by P, connected companies, or X, had a balance that could have cleared that payment. I consider that this evidence supports a conclusion that X and P were more than capable of the level of dishonesty required for an APP scam such as the one Mrs S alleges she fell victim to.

The police have also said that they can see very little of the funds received from investors being invested back into the company; most of it was spent on X and his family's lifestyle.

Overall, after having carefully considered the information from the liquidator and Mrs S, and given the findings I've made above, I'm persuaded that P's purpose was not aligned with what Mrs S believed when she made the payment in June 2021. Mrs S made the payment to provide a loan to P believing its purpose was to fund the cannabis cultivation project, whereas, in truth, P had the dishonest intention of diverting a substantial part of the money to support X's lifestyle, repay earlier investors, and, as and when necessary, deceiving investors that P was establishing and conducting viable business operations.

So, I think the circumstances here meet the definition of an APP scam as set out under the CRM Code.

Returning to the question of whether in fairness I should delay reaching a decision pending developments in the liquidation or police enquiries, I've explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so.

In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. The liquidators have already expressed their views. And as regards to the police's

investigations, there's no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on the evidence and issues I've discussed.

Is Mrs S entitled to a refund under the CRM code?

Under the CRM Code, the starting position is that a firm should reimburse a customer who has been the victim of an APP scam, like Mrs S. The circumstances in which a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code sets out those exceptions and stipulates that the assessment of whether they can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.

Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established that the customer ignored effective warnings given by a firm. It also states that a firm may choose not to reimburse a customer if it can establish that, in all circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments without a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;*
- the payment was for genuine goods or services; and/or*
- the person or business with whom they transacted was legitimate.*

There are further exceptions within the CRM Code, but they're not relevant to the facts in this case.

The disputed transaction was carried out in branch and in HSBC's initial response to Mrs S's claim, it explained they had sufficient fraud prevention measures in place. In its final response letter, HSBC said 'our records show that when you made the payment at branch, you were given a clear and effective warning that it may be a scam and were advised of the steps you should take to protect yourself'. And in its submissions to this service, HSBC also explained that effective warnings were provided to Mrs S before or during the payment journey. It provided evidence of its internal procedures for the branch to follow when making payments as well of its notes from the time of the payment.

HSBC's system notes from the time of the payment confirm Mrs S advised the branch staff she was making an investment towards P. They also reflect that the branch staff was required to select an appropriate warning message to relay to Mrs S relating to 'making investment' and that Mrs S acknowledged the warning provided.

I've reviewed the internal procedures the branch were required to follow at the time Mrs S was making the payment. And whilst their system notes reflect Mrs S acknowledged the warning provided, it's not provided any detail on the content of that warning. That said, Mrs S's states that when she went into her local branch to transfer the funds to P, the cashier asked if she knew where the funds were going to which she responded yes. She confirmed it was to a lighting company that both Mrs S and her sister were investing in. But at no point was there any mention this could be a scam, or any suggestion that she should take extra steps.

In light of the above, I'm not satisfied HSBC has shown an effective warning – one that was sufficiently impactful or specific as required under the CRM Code, was

provided to Mrs S. So, I can't fairly say Mrs S ignored an effective warning (its important to note here, that I am deciding whether or not Mrs S ignored effective warning, rather than determining whether HSBC ought to have provided one).

HSBC has also questioned whether Mrs S had a reasonable basis for belief before making the payment. It said she did not take reasonable steps to check the payment was genuine. And she did not do any independent research to check the company was genuine, only relying on the recommendation of family and friends.

Mrs S was introduced to the investment opportunity through C whom she spoke to in detail about the potential investment which included discussions about the pros and cons of investing. C is an independent financial advisor who had also invested significantly in P and given her longstanding friendship with C for many years she 100% trusted his judgement and integrity. Mrs S also advised of checks carried out on Companies House and everything checked out with P. Furthermore, she received ample documentation and paperwork which looked professional, genuine and above board. I've also reviewed the documentation which appears professional, and there was nothing in the public domain at the time about P from which Mrs S could have reasonably inferred that a scam was taking place.

Overall, as I don't think HSBC has established that any of the exceptions to reimbursement under the CRM Code apply here, it should refund the money Mrs S lost in full.

My provisional decision was that I uphold this complaint.

I invited further comments from both parties. Mrs S responded to my provisional decision, accepting my recommendation. HSBC responded disagreeing with the outcome I'd reached. They raised the following points:

- In the absence of any law enforcement outcome to the contrary, HSBC remain of the firm view that this was a failed legitimate business. It would appear P raised patents for technology to be used in the project 5/6 years prior to the investments, and therefore points firmly to a project that has gone wrong.
- Whilst the police continue to investigate, they've cancelled X's bail and returned their passport. This would strongly suggest that there's a lack of criminality / intent to scam. And therefore, it's premature for this service to progress this matter.
- As Mrs S's sister contributed 50% towards the investment, that element is not her loss.

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'd like to thank HSBC for their comments. I appreciate the strength of feelings they have on the matter and I've taken note of what they've since said about the police investigation and X. But in making my provisional findings, I had already considered the points raised specifically under the headings relating to the appropriateness to determine Mrs S's complaint now and whether Mrs S has been the victim of an APP scam, as defined in the CRM Code.

In addressing HSBC's comment regarding the amount of the loss that belongs to Mr S, I did make note of this in my provisional decision. In fact, I set out that Mrs S's sister had been added to the complaint as an interested party and will be aware of the outcome.

Indeed, the total loss of £5,000 was funded jointly by Mrs S and her sister. Mrs S has been consistent on this point since the complaint was brought to this service, and the evidence shows Mrs S sending key correspondence regarding the investment into P to her sister.

Ultimately the funds passed through Mrs S's account with HSBC. That in and of itself doesn't mean HSBC shouldn't be on the lookout for unusual or suspicious transactions or that loss can't be refunded in such circumstances. And I'm satisfied it is fair for both Mrs S's and her sister's loss to be considered here against HSBC. Whilst informal, this in effect created a trust with the funds held on trust. But I can only direct HSBC to repay Mrs S even though some of those funds originated from her sister.

As such, the further comments raised by HSBC don't change the outcome I reached in my provisional decision.

Putting things right

I've thought carefully about whether interest should be added to the refund Mrs S is due from HSBC. But I'm mindful that it's decision to decline her claim was made the same day it was made. In considering Mrs S's complaint, including submissions from the liquidator which I consider the bank could have obtained if it wanted to when it was considering the claim, I now consider that HSBC should have reimbursed Mrs S when she made a claim under the Code.

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by HSBC at the time of the payment would have positively impacted Mrs S's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about P such that Mrs S would have chosen not to proceed.

With that in mind, in order to put things right, HSBC UK Bank Plc needs to:

- refund Mrs S the disputed payment of £5,000 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded, calculated from the date the bank declined their claim to the date of settlement

If HSBC UK Bank Plc is legally required to deduct tax from the interest award, it should tell Mrs S how much it has taken off. It should also give Mrs S a tax deduction certificate if she asks for one, so she can claim it back from HMRC if appropriate.

I'm aware some of the loss belongs to Mrs S's sister who has been added to this complaint as an interested party and will be aware of the outcome. It will be for Mrs S to repay her sister the proportion of what they're due/ belongs to them.

As P is now in liquidation, it's possible Mrs S may recover some further funds in the future. In order to avoid the risk of double recovery, HSBC is entitled to take, if it wishes, an assignment of the rights to all future distributions under the liquidation process in respect of this £5,000 investment before paying the award.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require HSBC UK Bank Plc to put things right for Mrs S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 4 September 2025.

Mark O'Connor
Ombudsman