DRN-6076848

The complaint

A company which I'll call 'T' complains that HSBC UK Bank Plc didn't reimburse the money it transferred to a fraudster.

The complaint is brought on T's behalf by one of its directors, Mr O. Mr O is represented by Mr A, but for ease I'll refer to Mr O throughout the decision.

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

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, in late-2021 Mr O was invited to invest in P by one of T's associates, X. Mr O says he undertook the relevant due diligence on P and was persuaded by the premises, literature and long term expected returns, as well as his knowledge of X.

In November 2021, Mr O signed an agreement with P which meant T would loan funds to P for a year which would then be converted to share capital with dividends. Mr O agreed that T would invest £1,000,000 but T made three payments to P: £250,000 on 2 February 2022, £250,000 on 18 February 2022 and £250,000 on 15 March 2022. A further payment of

£250,000 was made on 18 February 2022 but this was made from another company that Mr O is a director of and therefore won't be addressed as part of this complaint.

Around the same time that T was making investments with P, other companies which Mr O is a director of also made investments with P. The other company complaints have been considered under separate references and won't be considered as part of this decision.

In August 2022, X said P's refinancing had been delayed and asked Mr O for an additional investment. Mr O agreed T would provide funds to P, so a payment was made for £200,000 on 18 August 2022. T's first investment return was expected in November 2022, but it didn't receive the expected return. X noted financial constraints and the Covid-19 pandemic as reasons for this, which Mr O didn't initially query. However, a short while later, Mr O became aware of concerns raised by other investors that they hadn't received returns either and P and X were the subject of a police investigation. Mr O then thought that T had been scammed, and its funds had been used fraudulently and as part of a Ponzi scheme.

In May 2023, T complained to HSBC and asked the bank to refund its losses in line with the Lending Standards Board's ('LSB') Contingent Reimbursement Model ('CRM') Code. HSBC declined to refund T as the company had authorised the payments to P, and it said it had met its legal obligations in processing T's payments as requested. Unhappy with HSBC's response, T asked our service to look into its complaint.

At the time the payments were made, HSBC was a signatory of the CRM Code which required firms to reimburse customers who had been the victims of Authorised Push Payment ('APP') scams in all but a limited number of circumstances. After the complaint was referred to our service, HSBC told us that it hadn't made a decision on whether complaints about P should be considered as a scam as there was an ongoing police investigation which would be relevant to T's complaint. And so, it now seeks to rely on an exception within the CRM Code - R3(1)(c), which allows it to wait for the outcome of the police investigation before making a decision.

Our investigator recommended the complaint be upheld. She thought that HSBC should refund T the £950,000 loss, along with annual interest at 8% simple from the date HSBC had declined T's claim under the CRM Code to the date of settlement. She thought that T's funds hadn't been used for the purpose they were intended, and therefore T's loss should be considered as an APP scam under the CRM Code. She noted that HSBC's reason for not refunding T had been conflicting, as it had said T had been scammed but it hadn't done anything wrong, but then said it hadn't decided if this was a scam. Therefore, she'd considered if it was fair for HSBC not to refund T using term R3(1)(c) of the CRM Code as it was waiting for the outcome of the police investigation, but she thought it wouldn't have an impact on the outcome and therefore it wasn't reasonable for HSBC to rely on that term. She was also satisfied that T had reasonable basis to believe it was investing legitimately, therefore the bank couldn't rely on that as a reason not to reimburse T's losses.

The investigator noted that our award limit was £415,000 and recommended that HSBC refund this amount along with annual interest at 8% simple and refund any lost interest as a result of the transactions. She also recommended that HSBC refund the £535,000 in excess of the limit on a voluntary basis

T accepted the investigator's opinion. HSBC didn't agree and asked for an ombudsman to review the complaint. The bank said in summary that:

- It was reasonable for it not to reimburse T in line with the CRM Code as there was an ongoing police investigation which may impact on the outcome of any refund.

- This was a civil dispute between T and P, and it was being 'shoehorned' into the CRM definition of an APP scam. It said T had invested in a high risk, unregulated investment and should have been aware that it could lose all its money.

- The view was not specific to T, and was a generic assessment that P was a fraudulent investment scheme.

- There was insufficient evidence to say there was an intent to defraud T, and it didn't think the investigator's opinion was fair and reasonable.

- It didn't agree with the interest award of 8% and said this should either not be payable or be much lower.

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.

When considering what is 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 relevant time.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (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 is of particular relevance to this case. It was a voluntary code which required firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. And as I mentioned above, HSBC was a signatory to the CRM Code at the time the payments in dispute were 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 regulation 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 T has lost its money to an APP scam. If I conclude, on the balance of probabilities, that the payments in question meet the definition of an APP scam, as defined above, then T 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 T scam claim, HSBC concluded T appeared to have been the victim of an authorised push payment scam. But it declined to refund T as the company had authorised the payments and it had followed its legal obligations by processing those requests.

However, when our investigator issued her findings HSBC's position changed. The bank then said it wasn't satisfied T's circumstances met the definition of an 'APP Scam', instead HSBC said it thought this was a civil dispute. The bank also said it no longer believed T had been scammed but that it had invested in an unregulated high-risk investment where there was always a possibility of business failure. HSBC told us that it 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.

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 should be paused. If the case is subject to investigation by a statutory body and the outcome might

reasonably influence a 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 T'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 in practice is that the R3(1)(c) condition only applies before the firm (in this case HSBC) has made its decision under the CRM Code.

HSBC can't seek to delay a decision it's already made. I think it's clear from the information provided to our service by HSBC that it responded to T's claim for reimbursement by refusing it when issuing its email letter of 26 September 2023 – the details for which I've already mentioned above. As a result, R3(1)(c) was no longer an option for HSBC by the time T made its complaint.

I recognise HSBC says there is an ongoing police investigation and any outcome will likely be relevant to this complaint. However, as HSBC has already made its decision under the CRM Code the bank can't now rely on this provision.

Is it appropriate to determine T's complaint now?

However, I think it's right that I should consider whether it would be appropriate to delay my decision in the interests of fairness, given that the police investigation is still on-ongoing (although its progress is unknown) and 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'm satisfied that I don't need to await the outcome of that investigation to make a fair and reasonable decision. In order to determine T's complaint, I have to consider on the balance of probabilities, if the available evidence indicates that it's more likely than not that T was the victim of a scam rather than a failed investment. I also have to consider if providing a decision now would unfairly or unreasonably impact the parties. If that was the case, I would delay making my decision, but I'm not persuaded that's the case here.

I think it's also worth noting that T initially requested reimbursement from HSBC in mid-2023 before bringing its complaint to this service a couple of months later. The role of our service

is to provide an outcome on complaints quickly and informally, and I don't think it's reasonable to delaying giving T an answer for an unspecified length of time unless the delay is vital for the sake of fairness to both parties. Having considered the evidence currently available to me, I don't think it's fair to delay the resolution of this 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 significant if there are secured creditors, given recoveries would initially be for any secured creditors. However, 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 T under the liquidation process in respect of the £950,000 investment before paying anything I might award to it on this complaint.

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

Has T been the victim of a scam, as defined in the CRM Code?

As I've mentioned 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 T'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, T must have transferred funds to P for what it 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 T's intended purpose for the payment was legitimate, whether or not the intended purposes of T and P were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of P (including X or other directors).

T lent £950,000 to P between February and March 2022 which it believed would be used for funding its project. Mr O understood T's loan would be repaid after 12 months. In return, Mr O also understood T had acquired 200,000 shares in P. T was introduced to the potential investment through X – whom Mr O said T had already had a previous professional working relationship with. Mr O trusted X's judgement and integrity based on previous interactions and was also provided with brochures and went to visit the premises – all of which looked professional prior to investing. T also received a loan agreement with P. I'm satisfied that at the time of making T's payment to P, Mr O fully believed that it was for a legitimate purpose.

HSBC is concerned about Mr O and T's previous relationship with X, and it's said that it would have expected a lawyer to be involved before T had invested such substantial sums in P. I acknowledge the bank's concerns about this, but I think it's reasonable given Mr O's historical relationship with X that an unequivocable trust had been built. Indeed, X had previously undertaken business transactions with T with no concerns being raised, so I think

it's reasonable that Mr O believed what he was told by X. I think it's also worth noting that X didn't simply ask T to invest in P. I've seen evidence that X also asked Mr O to lend him funds personally – which T did. Given that X provided T with agreements that looked professional, visits to the premises and supporting literature, and a relationship between directors which appears to be more than just business transactions, I think it's reasonable that Mr O trusted X's word. All in all, I'm satisfied that at the time of making T's payments to P, Mr O fully believed that the investment T was making 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 T's funds or otherwise deprive it of its money, rather than to use it for the purpose Mr O was led to believe.

I've reviewed the evidence provided to our service from both the police and liquidator, along with related information we have received on a confidential basis. I acknowledge HSBC feels these findings are not specific to T's investment, but I'm satisfied it's reasonable to rely on them for this case. I think the following observations the liquidator made, which our investigator noted 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, that they preceded T'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.

HSBC says that the evidence citied by our investigator shouldn't be relied upon as its not specific to T's complaint. However, 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, there is only around £83,000 being sent to B during the relevant period. This leads me to conclude that P had no intention – by the time T made its payments – to fulfil its obligations to B in relation to the project, and therefore it also had no intention to use T's funds as it had led Mr O to believe it would. Instead, based on what the liquidator has noted, it appears that T'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'm satisfied they support this allegation, and I think it's reasonable to believe this is what the liquidator referred to when it said technology and intellectual property couldn't be located. I also think it's also worth noting here that the newsletter and investor memorandums received from P were written before T had made its payments. Therefore, I'm satisfied P intended to deceive T about the use of its funds.

I've also seen further evidence of X's dishonest business practices. 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.

Furthermore, 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 also 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 T alleges it fell victim to. Additionally, although limited by what can be provided at this time, the police have said 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 available to me, and given the findings I've made above, I'm persuaded that P's purpose was not aligned with what T believed when it made the payments in February and March 2022. T made the payments to provide a loan to P believing its purpose was to fund the cannabis cultivation project, instead, 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, whilst I acknowledge HSBC's comments this should be considered as a high-risk unregulated investment whereby T just lost its money, I don't agree. I think the circumstances here meet the definition of an APP scam as set out under the CRM Code and I think they are relevant to T's complaint.

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 regarding the police 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 T 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 T. 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.

HSBC hasn't argued that it provided an Effective Warning in this case. The relevant exception to reimbursement in the CRM Code looks at whether T ignored an Effective Warning. As HSBC seems to accept it didn't provide one to T, it can't fairly then apply this exception.

But in any event, I think even if HSBC had given an effective warning about investment scams, I'm not persuaded that would have made a difference here. I say that because due to the sophisticated nature of P and the historic relationship with X, it's unlikely that any warning would have prevented the scam payments being made. And for the exception to reimbursement under the CRM Code to apply, the warning would need to have a material effect on preventing this loss.

However, HSBC has questioned whether T had a reasonable basis for belief before making the payments. The bank said Mr O didn't take reasonable steps to check the investment was genuine, and due to the size of the investment, it would have expected T to check the legality of the agreements and that the company was genuine with a solicitor before making the payments to P. However, T was introduced to the investment opportunity through X, who

it had a historic business relationship with. Furthermore, Mr O says he spoke to X in detail about the potential investment for T, including visiting the intended premises. Given X said they had personally invested in P and there was existing 'personal' relationship, Mr O trusted X's judgement and integrity. Mr O also advised of checks carried out on Companies House and everything checked out with P.

Furthermore, Mr O said he received documentation and paperwork which looked professional, genuine and legitimate. I've also reviewed the documentation which appears professional, and there was nothing in the public domain at the time about P from which Mr O 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 T lost in full.

Putting things right

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 Mr O's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about P such that Mr O would have chosen not to proceed with T's investment. To be clear, I'm not making a finding that HSBC should have intervened at the time of the payment.

However, having reviewed T's complaint, including submissions from the liquidator, and other publicly available information which the bank could have obtained if it wanted to when it was considering the claim – such as X's ongoing bankruptcy when it became P's director, I consider that HSBC should have reimbursed T when it asked the bank to reimburse its loss and therefore made a claim under the Code.

Where I uphold a complaint, in line with the DISP rules, I can award fair compensation requiring a financial business to pay compensation of up to £415,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation is more than £415,000, I may recommend that the business pays the balance.

In this case I uphold the complaint, and I think it would be fair for HSBC to refund the full amount of T's loss, along with annual interest at 8% simple from the date it declined T's claim under the CRM Code initially, (from the evidence available this appears to be 7 September 2023) to the date of settlement.

I recognise that HSBC feels it is unreasonable to apply an annual interest rate of 8% simple to the award as it says this equates to a windfall at the bank's expense. HSBC also says that it is being unfairly penalised for the time taken by our service to investigate T's complaint and T shouldn't be compensated as it had willingly chosen to part with its funds. It also argues our service has taken a different approach on cases with have been the subject of an unrelated alleged scam. However, as I have explained above, I think HSBC should have refunded T based on all the information which was available to it when it was first made aware of the scam – both internal and external. Therefore, the time that T's complaint has been with our service is irrelevant given my finding on the matter.

I also note that HSBC has suggested a lower amount of interest be applied. However, whilst our service has made recent changes in the way interest may be applied to complaints, 8% was the standard rate of interest applied by our service for complaints brought to us at that time. And for this complaint I see no reason to deviate from that approach.

As I mentioned above, as P is going through insolvency proceedings, it's possible T 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 this process before paying the award.

My final decision

My final decision is that I uphold this complaint. I instruct HSBC UK Bank Plc to do the following:

- refund T up to the maximum award limit of £415,000 and add annual interest at 8% simple from the date it declined T's claim under the CRM Code to the date of settlement.

I recommend the HSBC also refund T the remaining funds that exceed our limit totalling £535,000 plus annual interest at 8% simple from the date it declined T's claim under the CRM Code to the date of settlement.

This recommendation is not part of my determination or award. HSBC UK Bank Plc doesn't have to do what I recommend. It's unlikely that T can accept my decision and go to court to ask for the balance. T may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 2 April 2026.

Jenny Lomax
Ombudsman