

The complaint

Mr S' complaint is about the way Crowdcube Capital Limited presented an investment opportunity on its crowdfunding platform. He feels information about the company he invested in was inaccurate and Crowdcube should have checked this

What happened

Crowdcube is an investment-based crowdfunding platform that promotes investment opportunities by way of pitches. Prospective investors can view information about a business and the details of the investment in these pitches on the platform before deciding whether to invest. In return for their investment they receive shares in the business.

Mr S made an investment in a brewery (Company A) via Crowdcube's crowdfunding platform in 2017. Mr S says that one of the main reasons for investing in Company A was that it said it was going to use his investment to open a new state of the art brewing facility and taproom site, which he intended to visit.

Mr S invested £500 during this fundraising round and as Company A surpassed its initial target of £1,000,000, the round successfully closed with Company A raising approximately £1.8 million. However, Company A subsequently entered administration in December 2022.

Mr S raised a complaint with Crowdcube in December 2022 as he felt Company A didn't use the raised funds to build the new brewing facility and taproom site as promised in the Crowdcube's promotion. He said that Crowdcube failed to conduct properly due diligence on this point and that there was conflict of interest at play as Crowdcube's chief operating officer was on the board of Company A.

Crowdcube considered Mr S' complaint but didn't uphold it. In summary, it said:

- Appropriate due diligence was conducted when verifying the investment opportunity in Company A and it was satisfied the pitch was clear, fair and not misleading.
- Mr S was provided with risk warnings of the high-risk nature of the investment.
- The administrators of Company A were contacted to obtain information about Company A's administration, after which Crowdcube communicated to investors on 22 December 2022.
- Potential conflicts of interest are managed by ensuring any person connected with a company has no involvement in decision making and is completely segregated from the engagement.
- Crowdcube's chief operating officer's involvement with Company A was disclosed in the pitch and circulated in the cooling off email sent to investors.

Mr S didn't accept Crowdcube's findings and so he referred his complaint to this service for an independent review.

One of our investigators looked into Mr S' complaint but didn't think Crowdcube had done anything wrong. In short, they said:

- They were satisfied that the information within the pitch was fair, clear and not misleading and that Crowdcube acted in Mr S' best interests by approving the promotion and allowing him to invest in Company A.
- Crowdcube provided our service with the due diligence checks it conducted and they were satisfied that they had checked the plans to build the brewing facility and taproom were plausible.
- Mr S was made aware of Crowdcube's chief operation officer's involvement with Company A before investing and so they didn't think this impacted his decision to invest.

As Mr S didn't accept the investigator's findings, the complaint has been passed to me to decide.

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.

At the time of promoting Company A's investment opportunity, Crowdcube was authorised and regulated by the FCA. The relevant rules and regulations FCA regulated firms are required to follow are set out in the FCA's Handbook of rules and guidance.

The FCA Principles for Business ("PRIN") set out the overarching requirements which all authorised firms are required to comply with. PRIN 1.1.1G, says *"The Principles apply in whole or in part to every firm"*. The Principles themselves are set out in PRIN 2.1.1R. The most relevant principles here are:

- PRIN 2.1.1R (2) *"A firm must conduct its business with due skill, care and diligence."*
- PRIN 2.1.1R (6) *"A firm must pay due regard to the interests of its customers and treat them fairly."*
- PRIN 2.1.1R (7) *"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*

Crowdcube was also required to act in accordance with the rules set out in the Conduct of Business Sourcebook (COBS). And the most relevant obligations here are:

- COBS 2.1.1R (1) *"A firm must act honestly, fairly and professionally in accordance with the best interests of its client."*
- COBS 4.2.1R (1) *"A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."*

So before approving Company A's pitch, Crowdcube needed to satisfy itself that the information contained within it was fair, clear and not misleading. And it also needed to be satisfied that by approving the promotion and allowing Mr S to invest in Company A, it would continue to be acting in his best interests.

In order to satisfy itself of the fair, clear and not misleading nature of the claims or assertions made in the pitch, Crowdcube would need to carry out reasonable checks. What these reasonable checks involve, or indeed what they might be in any given case, is something which is very much left to each platform to determine and would vary according to the particular circumstances. It's clear that it wasn't the regulator's intention to provide a set of tick boxes which needed to be completed for a promotion to be approved.

I've also borne in mind that the FCA said the following in its July 2018 consultation paper on loan-based ('peer-to-peer') and investment-based crowdfunding platforms:

"It is our view that it will be unlikely that a platform could argue that it has met its obligations under Principle 2, Principle 6 (PRIN 2.1.1R) and the client's best interests rule (COBS 2.1.1R), if it has not undertaken enough due diligence to satisfy itself on the essential information on which any communication or promotion is based."

The FCA also said that:

"In relation to statements about future commercial success, this should include at least a basic plausibility check. For example, if a borrower says it is going to build a block of flats within 6 months but it does not have the relevant construction permissions, it would seem reasonable for a platform to question the plausibility of the project."

I've also considered the FCA's guidance on approving financial promotions from November 2019 which explained that firms should:

"...analyse, and carry out due diligence regarding, the substance of a promotion before approving its content for communication by an unauthorised person. The extent and substance of the analysis and diligence needed to be able confirm that a promotion is fair, clear and not misleading will vary from case-to-case and will depend on the form and content of the promotion. When assessing whether a promotion is fair, clear and not misleading, a firm may need to consider (among other things):

- *The authenticity of the proposition described in the relevant promotion."*

Whilst I appreciate Mr S had invested prior to the publication of these consultation papers and guidance, I still feel they are relevant as they provide clarity as to the interpretation and application of the existing rules and guidance which were applicable to Crowdcube at the time.

The FCA's website provides consumers with useful information on crowdfunding. This includes a section on how consumers should protect themselves before investing and says they should first understand what due diligence a platform performs on investee companies. Looking at Crowdcube's website, it makes it clear what due diligence it performs in its due diligence charter. It explains:

"The following due diligence is carried on each company before the pitch is open to investment: [...] to fact check all statements and claims made in the pitch text to ensure it is fair, clear and not misleading by obtaining, where possible, independent evidence."

Taking into account the above, it's clear that Crowdcube's due diligence needed to be sufficient to satisfy itself on the essential information on which the promotion of Company A was based. Crowdcube also needed to check that the claims made in the pitch were authentic by way of a basic plausibility test. Further, Crowdcube needed to make Mr S aware of the extent of which it performed due diligence on Company A, let him know the outcome of this and for it to be sufficiently detailed to allow him to weigh up the risks and benefits of investing in Company A.

The crux of Mr S' complaint is that Company A didn't use the funds raised in the way in which Crowdcube promoted it would. The pitch for the investment opportunity in Company A said:

“Our Plan:

- 1. Build a new, state of the art brewery*
- 2. Develop our current brewery, to enable us to lead the barrel ageing and wild beer category in the UK*
- 3. Develop our growing bar and restaurant business”*

It's clear from the above that Company A's plans were not only to build a new brewery but also to develop its current one, as well as to develop its overall business.

The 'financials' section of the pitch said the following about the use of funds:

“We plan to use the funds to secure the land which we estimate will cost around £1.5MM and be paid in 2 instalments.

The remaining costs are estimated to be £7.8MM and will cover building, fitting out and contingency costs over the expected 24-month project.

We intend to finance this with £6MM of combined mortgage and asset financing as well as operating cash flow from the combined brewery and bars business.”

Crowdcube has provided clarity around the due diligence it performed in regard to the above statements. It says it received sufficient information from Company A to satisfy itself that Company A would primarily use the funds for the new brewery. As part of its checks, Crowdcube received a confirmation that the land for the new brewery was expected to be purchased for £1.5 million and payable in two instalments. It also considered Company A's financial statements and credit standing which demonstrated that its plans were plausible. I can confirm I've seen this information and I have no concerns that Crowdcube didn't undertake relevant checks here. I appreciate Mr S is disappointed that the brewery didn't get built as planned, but I don't think Crowdcube is responsible for this.

Crowdcube made it sufficiently clear that further funds were required for the project and that Company A intended to finance this via a mortgage and asset financing, it didn't currently have the funds. Therefore, Mr S ought to have known that the building of the new brewery wasn't guaranteed and he should have only proceeded with his investment if he was happy to invest on this basis.

Turning to Mr S' concerns about one of Crowdcube's directors being on Company A's board and this being a potential conflict of interest. Having assessed the information provided, I note from the 'Team' section of the pitch that the director was listed as a non-executive director Company A. And within the explanatory note provided to investors, it was disclosed that the director was involved in advising Company A. Furthermore, it was disclosed that the director was the chief operating officer of Crowdcube. Therefore, whilst I've not seen anything to suggest a conflict of interest led to Mr S' loss, I'm satisfied Crowdcube disclosed any potential conflict of interest here. And so, Mr S should have only proceeded to invest if he was happy to do so knowing this connection existed.

So taking into account all of the above, I'm satisfied the information Crowdcube gave Mr S was clear, fair and not misleading.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 October 2023.

Ben Waites
Ombudsman