DRN-2483181

The complaint

Mr S complains Crowdcube Capital Limited ("Crowdcube") provided misleading information about an investment opportunity on its crowdfunding platform. He wants Crowdcube to refund his investment.

What happened

Mr S made an investment in a company ("A") through Crowdcube's platform in February 2018 for £1,500. A specialised in the manufacturing of yachts and power boats. Towards the end of 2019, A became insolvent resulting in Mr S losing all the money he'd invested.

Mr S complained to Crowdcube. He said the insolvency had come about because of a long running dispute A had with one of its customers – the settlement resulted in A having to pay in excess of £1m. As the dispute pre-dated Crowdcube's promotion, Mr S thought Crowdcube ought to have known there was a threat of litigation, and that it ought to have disclosed this information to investors. Because it hadn't, Mr S said Crowdcube hadn't performed sufficient due diligence to ensure the pitch it promoted was fair, clear and not misleading.

Crowdcube didn't agree. It said before approving the pitch for promotion, it had carried out a number of checks in line with its due diligence charter. Crowdcube had asked A to complete a legal review document which posed a number of questions, including whether the company was involved in or being threatened with litigation – to which A mentioned another lawsuit in which it had commenced proceedings against a separate company for breach of contract and outstanding debt.

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

- Crowdcube's terms and conditions said investors made their own decisions to invest, and Crowdcube didn't provide any recommendations or advice
- Crowdcube weren't required to perform prescribed amounts of due diligence, but he acknowledged it had specifically asked A to disclose threatened or active litigation and it was entitled to rely on the information it was provided with
- if A had failed to disclose information to Crowdcube, we wouldn't find against it so long as the information wasn't publicly available
- and ultimately, from everything he'd seen Crowdcube had carried out sufficient due diligence to satisfy itself that the information included in the pitch wasn't misleading

Mr S didn't agree. His second submission referred to details contained in the judgement against A and the particulars of another of his cases that has been considered by this service. He said that whilst *'both Crowdcube and investors were evidently misled'*, only Crowdcube profited from the situation, whilst investors lost out. So, by not upholding the complaint, this would send a message that there would be no consequence to Crowdcube or

companies that were looking to raise funds through the platform if false information was provided. As no agreement could be reached, the case was passed to me.

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.

Having done so, I don't uphold this complaint for broadly the same reasons as the investigator. However, before I explain further, I'd like to note that I do recognise Mr S' strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. But it may be helpful to explain that my role is to consider the evidence presented by him and Crowdcube, and reach what is an independent, fair and reasonable decision based on the facts of this case.

The complaint is about the information Crowdcube supplied to Mr S. Mr S initially said that Crowdcube hadn't carried out sufficient due diligence before it promoted the investment. He thought it ought to have known about a particular threat of litigation or live litigation that occurred in April 2018; around two months after the promotion was advertised. His position since then is that even if Crowdcube was misled, he believes it would be unfair for Crowdcube to profit from the promotion and it would send the message that there would be no consequence if incorrect information was provided by third party companies looking to fundraise.

I'll start by addressing Mr S' first argument. I've taken into account the wider obligations on Crowdcube set by the Financial Conduct Authority ("FCA"). The FCA Principles for Business ("PRIN") and the Conduct of Business Sourcebook ("COBS") set out the overarching requirements which all authorised firms are required to comply with.

The most relevant here are PRIN 2.1.1R (2) which says: *"A firm must conduct its business with due skill, care and diligence"* and COBS 4.2.1R (1) which says: *"A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."*

I've 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."

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."*

So before approving A's promotional material, Crowdcube needed to satisfy itself that the material itself was fair, clear and not misleading and enabled Mr S to make an informed decision of the risks associated by investing in A. To satisfy itself, 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 provider to determine and would vary according to the particular circumstances. But what is clear is 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.

Crowdcube's due diligence charter explains that it *"relies upon information provided by every applicant company and its directors who are required to ensure all information provided is true and accurate"* in addition to "*third-party tools to conduct some due diligence."* As a part of those checks, Crowdcube reviewed information available in the public domain such as Companies House records. None of the information it had sought contained information that would have alerted Crowdcube to a second and separate court claim. But Mr S disagrees. He believes there would or ought to have been some knowledge of the claim.

I've looked over the available records including the information Mr S has referred to – the judgement issued against A as well as the media articles. The judgement outlines the claimant began action in April 2018 – two months after Mr A invested – with the case being decided in December 2019. The articles are around a similar time with the latest being from around January 2020. The evidence indicates that Crowdcube wouldn't have been aware of any material information about this litigation that could have affected A's solvency at the time of the pitch. In my view, through its own searches, the earliest record Crowdcube could have found of this dispute would have been December 2019. So, it follows that Crowdcube's communication with Mr S about this investment was fair, clear and not misleading.

Moving to Mr S' second point, he doesn't think it's fair Crowdcube retain the profit they earned on the arrangement of his investment given investors lost out. For me to agree, I'd need to see some evidence that Crowdcube acted outside of the terms it agreed to at the outset or otherwise treated Mr S unfairly, and that this caused his losses. But I haven't found this to be the case. Crowdcube charged a fee to investors and companies looking to raise investment. The fee was to cover the value of services Crowdcube provided and continued to provide whilst the investment ran. It wasn't dependent on the success for either A or their investors. So, to my mind, I'm not persuaded that Crowdcube would need to return this fee to the investors.

Additionally, at no point did Crowdcube agree to bear the risk of the investment failing, for any given reason. Crowdcube's terms made clear that the nature of investing in investment-based crowdfunding presented a real risk to lenders. It explained:

"8.2. The Investor acknowledges that Crowdcube approves each Pitch as a financial promotion but does not provide advice or any form of recommendation regarding the suitability or quality of the Investment…

8.3. The Investor acknowledges and accepts that the Website includes a forum which is an integral part of an Investee's Pitch which is intended as a service to Investees to put them in contact with Investors, and thus that Crowdcube's investigation of the Investees and the content of their Pitches is limited, and accordingly Crowdcube makes no warranty or representation and assumes no liability in respect of the Investees or the content of their Pitches. The Investor must make his/her own assessment of the viability, accuracy and prospects of the Investees, their Pitches, and any relevant investment propositions and should consult his/her professional advisers should he/she require any assistance in making such an assessment or should the Investor require any services whatsoever in connection with Crowdcube. In particular, the attention of the Investors' is drawn to the disclaimer, risk warning and regulatory notice on each Pitch."

Crowdcube also displayed the following risk warning on its platform, *"Investing in start-ups and early stage businesses involves risks, including illiquidity, lack of dividends, loss of investment and dilution, and it should be done only as part of a diversified portfolio."*

In my opinion, in clear language Crowdcube sufficiently highlighted the risks involved in investing via crowdfunding such that they could be easily understood.

Of course, if it failed in its responsibilities or treated Mr S unfairly, and that caused a loss, it ought to compensate him. But here, I don't think it did. Mr S' losses were caused by the failure of the firm he invested in, not by Crowdcube. As such, it wouldn't be fair for that risk to be transferred to Crowdcube.

I'm satisfied Crowdcube did all it needed to verify the information provided about the company. If Mr S feels the company misled him and caused him a loss, then he may have rights as a shareholder he can seek to enforce against the company itself. But it wouldn't be fair or reasonable in these particular circumstances to hold Crowdcube responsible for his losses.

Lastly, Mr S claims future companies looking to raise investment may be emboldened to make false statements on their pitch. Whilst I have a lot of sympathy for his position and the losses he experienced, I should say that I can only consider the actions of Crowdcube and limit that to what has actually happened. Taking into account all the factors I've explained above, I'm not persuaded it would be fair to hold Crowdcube responsible for the failure of A, or Mr S losing out on his investment.

My final decision

I do not uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 November 2021.

Farzana Miah
Ombudsman