

The complaint

Mr M complains about the way Seedrs Limited presented an investment opportunity on its crowdfunding platform. He feels information about the company he invested in was inaccurate and Seedrs should have checked this.

What happened

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

Mr M invested around £20,000 in a technology company I shall refer to as "Company A" through Seedrs' platform in November 2020. Mr M says he invested in Company A as he believed in one of Company A's products, which he subsequently pre-ordered. The crowdfunding raise was successful, and Mr M was issued shares in Company A.

Following his investment, Mr M found that Company A's updates on its progress were lacking and he became concerned that the product was actually not a finished product (emphasised by the fact that he had yet to receive his order). Mr M says he and other investors put pressure on the director of Company A to provide updates on when the product would be available, which led to a website marketing the product to be taken down. In June 2021, Company A issued an update stating that it was primarily a software company as opposed to a hardware company, which compounded Mr M's concerns.

Mr M complained to Seedrs in June 2021 as he felt Company A's campaign was misleading. He said the campaign led him to believe that the product was finished as it said the product had won several awards and had received positive reviews from users. He said the campaign included several pictures of the product and included the website where the product was being marketed. Mr M asked Company A to refund him the money he'd invested and to also refund him the money he'd paid for the product.

Seedrs responded to Mr M's complaint in August 2021 but didn't think it had acted unfairly. In summary, it said:

- All campaigns on Seedrs are subject to a comprehensive due diligence process, as detailed and disclosed to investors in its Due Diligence Charter. This sets out the steps it takes and what Seedrs does not do when performing its due diligence. This enables investors to decide what further steps they may need to take to satisfy themselves when making an investment decision.
- These checks include (but are not limited to) ensuring that the company is a legitimate registered business, conducting background checks on company directors, and verifying any financial information that the company wishes to include in the campaign. As stated throughout the website, Seedrs does not provide a view on whether something is a good investment or not. That decision ultimately lies with the investor. The Due Diligence Charter also states that potential investors should conduct additional independent due diligence on the company before making an

investment decision, which is also reflected in the “*More Info*” section of each campaign page.

- It subjects each campaign to a vigorous review which considers every statement made in the campaign to ensure that each of these are fair, clear and not misleading. Where the statement is factual, Seedrs requires the company to provide evidence to substantiate the claim or amend or remove statements where this evidence cannot be produced.
- It independently reviewed the campaign and concluded that it was fair, clear and not misleading based on the factual evidence obtained.
- It enters into agreements with businesses which require them to provide periodic updates to their investors. To encourage businesses to provide these updates, Seedrs relies on an automated system that generates emails to businesses with reminders to provide these updates. However, Seedrs does not take any responsibility for the content of these updates, as these are treated as direct communications with the business. This is made clear to investors in the ‘*Important notice*’ box at the top of the ‘*Updates*’ section of each post on its website.

Mr M didn’t accept Seedrs’ findings as he felt he wouldn’t have invested in Company A had the campaign made it clear that the product wasn’t finished. As such, he referred his complaint to this service for an independent review.

One of our investigators considered Mr M’s complaint but also didn’t think Seedrs had acted unfairly. In summary, he said:

- It was clear to him that any investment in Company A was not in the success of the product specifically as the campaign made it clear what the raised funds would be used for - mainly to fund expanding the company in terms of marketing and strategy development.
- At no point did the campaign explicitly state that the product was finished and ready for mass production.
- From the evidence Mr M had provided, it was clear that Company A had misled him in later communications regarding the readiness of the product, but he had to focus his view on whether Seedrs had acted unfairly in the promotion of the investment and not Company A’s actions.
- Seedrs had confirmed that the main issue for the production of the product was due to COVID-19 related hardware supply chain issues and he didn’t think that it would have been possible for Seedrs to foresee or carry out any due diligence on this issue.
- The campaign said that Company A’s three-year goal was to license its software intellectual property to other manufacturers and shift towards being a software-only company and so he felt Mr M was made aware the shift to focus away from hardware.

Mr M didn’t agree with the investigator’s opinion. In short, he said:

- Seedrs would not be taking legal action against Company A if misleading information wasn’t provided. And it wouldn’t have offered him £5,000 to withdraw his complaint.
- He maintains that he wouldn’t have invested in Company A if he was presented with the correct information.
- He disagrees with the argument that the money was intended for other purposes.
- He sometimes invests directly in start-ups, in which case he takes full responsibility for his due diligence, however, it should not be the same as investing via a platform like Seedrs, which charges him fees and is expected to carry out basic due diligence. Seedrs either did not do this this time around or focused its attention on the money it expected to make by promoting Company A on its platform.

As an agreement wasn't reached, 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, Seedrs 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.*"

Seedrs 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 campaign, Seedrs 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 its customers to invest in Company A, it would continue to be acting in its client's best interests.

In order to satisfy itself of the fair, clear and not misleading nature of the claims or assertions made in the campaign, Seedrs 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 to 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 M 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 Seedrs 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 businesses.

Looking at Seedrs website, it makes it clear what due diligence it performs in its Due Diligence Charter. The section on verification of the campaign explains:

“Each Campaign you see on Seedrs has been reviewed by our Investment Team. Where there are material statements of fact, we require the company to provide evidence to substantiate the claim or amend or remove statements to ensure the Campaign is ‘fair, clear and not misleading’ in line with the FCA requirement.

Seedrs only reviews the text of the Campaign and the video (the “Campaign Text”).

Seedrs enables investors to communicate directly with a fundraising company via the platform, through the discussion forum and various document request features. This enables investors to ask for additional information relevant to their investment decision.

In verifying the Campaign Text, we ask the company to submit information and evidence from the company’s own records, such as management or statutory accounts, internal database records, and existing loan and third party agreements.”

The Due Diligence Charter also explains what important exceptions and limitations apply:

“We do not require evidence for aspirational statements or statements of intent or belief, although we will ensure that any such statements are phrased appropriately in light of their speculative nature. We may approve statements that convey ambitions of the company without taking a view on whether such ambitions are likely to be fully realised.

Seedrs does not review the discussion forum or any additional documents (including the pitch decks or financial statements) that the company provides directly to investors on their request. Investors must perform their own verification & diligence exercise on such materials.

The evidence we review is provided by the company and we do not audit it, which means we may not identify forged or altered evidence.”

Taking into account the above, it's clear that Seedrs due diligence needed to be sufficient to satisfy itself on the material statements of fact on which the promotion of Company A was based. It's also clear that Seedrs would only conduct due diligence on the text of the campaign and video. And whilst it would allow investors to communicate with Company A through the discussion forum and by way of directly requesting further documentation, this information wouldn't be checked by Seedrs.

The crux of Mr M's complaint is that Company A's campaign misled him into believing a product it had developed was finished and likely set to go to market. Mr M says the campaign said the product had won several awards and had received positive reviews from users. He also said the campaign included several pictures of the product and included the website where the product was being marketed.

Having reviewed the campaign, it's clear that photos of the product are used throughout, however, crucially, there is no statement of fact made about how ready the product is to go to market. If there had been, then I would have expected Seedrs to have conducted due diligence on this. Rather, the campaign says that features of the product are in development, the product *“will be sold under a subscription model”*, that Company A has *“different sales channels in the pipeline”* and that it had achieved \$30,000 of revenue in its first month of pre-orders. Whilst the purpose of my decision isn't to determine whether the product was finished and is rather to determine whether Seedrs conducted proper due diligence on the campaign before allowing Mr M to invest, I think these statements are a clear indication that the product wasn't finished. I understand Mr M's believes the campaign suggests otherwise, however, as there is no statement of fact regarding this point, I don't think Seedrs needed to ensure there was a finished product before promoting the investment.

It's important to note that the campaign didn't say that the proceeds of investment would enable Company A to manufacture and distribute a finalised product. Instead it explained that Company A intended to use the funds raised to:

*“Hire partnerships and business development team
Expand offering to other regions
Prototype and develop new features
Scale-up marketing and PR
Recruit a senior CTO and Chair with relevant market sector experience”*

I've also considered Mr M's points regarding the campaign's mention of awards and user reviews. Regarding the former, there appears to be only one award which is in relation to the product itself. There is no mention in the campaign that this award is given to finished products only and so I can't agree that this is misleading – considering the award was received. In relation to the user reviews, I believe Mr M is referring to the campaign's mention of a *“community of 230 beta testers”*. Whilst Seedrs has provided evidence of this to ascertain that it did request evidence to support this statement of fact, I don't agree that this statement confirms there was a finished product. Rather, *“beta”* suggests that the product was still in development.

As mentioned above, Seedrs' Due Diligence Charter states that investors should conduct additional independent due diligence on the company before making an investment decision. This mirrors the advice given on the FCA's website which says investors should first understand what due diligence a platform performs on investee businesses. I appreciate Mr M had tried to make enquiries regarding when the product would be ready to go to market, but these appear to have been made post-investment. Seedrs had clearly explained what

checks it would conduct in its Due Diligence Charter and so Mr M ought to have been aware of the extent of these checks. There were no factual statements made about the readiness of the product and so, if this was crucial to his decision to invest in Company A, then I would have expected him to have made enquiries regarding this before investing. On this basis, I don't think it would be fair to direct Seedrs to refund his investment.

I note Mr M has also provided correspondence he received directly from Company A to demonstrate that he was misled, however, I'm afraid I can only consider the actions of Seedrs. Furthermore, Seedrs makes it clear in its Due Diligence Charter that it wouldn't conduct any checks on direct communications between investors and investee businesses and so I can't hold Seedrs responsible for any misrepresentations made by Company A in these.

I've also considered Mr M's comments regarding the lack of updates he received. Whilst I appreciate Mr M expected more updates to be given, especially around the product going to market, I don't think Seedrs were expected to do this. Seedrs has explained that it encourages business to regularly update investors, but it cannot make any guarantees that investors will actually receive any update from the business with any particular frequency, if at all. I think this is fair considering the updates are coming from the businesses rather than from Seedrs. Seedrs' Membership Agreement explains:

"[w]ith respect to any newsfeeds provided on the platform, such content is provided for informational purposes only. Seedrs undertakes no obligation to update the newsfeeds and can alter or delete the content at any time without notice."

I also understand Mr M faced difficulty getting answers from Company A through the Seedrs discussion forum. But again, I don't think it would be fair to hold Seedrs responsible for this as questions are responded to by investee businesses rather than Seedrs. Seedrs has explained that it doesn't require businesses to answer all questions submitted to them on the discussion section or take any responsibility for questions left unanswered. Seedrs says this was all explained in the Membership Agreement:

"[t]he discussion forum and documents sections, and any additional documents made available for download do not constitute part of the campaign. Any responses to questions in the discussion forum and documents sections by the entrepreneur and any documents downloaded on request constitute "one-off communications" and should be treated in the same way as if you had a one-on-one email conversation with the relevant entrepreneur without any involvement from us."

So while I appreciate Mr M's experience in communicating with Company A may have been frustrating, I think there is a limit to what Seedrs can reasonably do for its customers in this sense and I don't think it would be fair to hold it responsible for the lack of updates provided.

Mr M says Seedrs offered him £5,000 during a phone call to withdraw the complaint – I've not been able to listen to this call. Regardless, this doesn't change the fact that I don't find the campaign to be misleading or that Seedrs failed to conduct proper due diligence and so I don't think the offer is relevant to the outcome of my decision. Equally, Mr M has also mentioned potential court action between Seedrs and Company A and although I'm not aware of any such action, I also don't think this affects my decision.

On a final note, I understand Mr M has requested that Seedrs also refund him the money paid directly to Company A for the product he pre-ordered. Whilst I'm not upholding this complaint and as such, not directing Seedrs to do anything further, I'd like to make it clear that the transaction Mr M is seeking to be refunded is one between him and Company A.

The purchase is completely independent of the Company A's campaign on Seedrs and so this wouldn't be something which this service could comment on.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 February 2023.

Ben Waites
Ombudsman