

## The complaint

Mr A complains he was misled about the details of a property investment. The investment was made through PropTech Crowd Ltd (PropTech) trading as Igloo Crowd, which was an appointed representative of Share In Ltd.

## What happened

PropTech ran a crowdfunding platform. Investors could buy shares in companies (special purpose vehicles, or SPVs) set up with the express intent in investing in something. Here, that was generally property.

So investors bought shares in the SPV, and the SPV purchased a property or properties. Income (for example from rent, or the sale of a property) could be distributed to investors through dividends, and the shares could be sold to other investors.

Mr A had made such investments before, and in July 2018 he invested in a particular SPV I'll call X. I understand Mr A was the sole investor in X. The proposition was for X to buy a leasehold flat for £33,000 and aim to renovate and sell it for a profit in a short timeframe.

Mr A invested an initial £44,000 through PropTech into X. Although the property didn't get sold, Mr A received dividends, and then in September 2020 he invested a further £3,000 for additional expenses related to the property X had bought. Shortly afterwards, the SPV was sold, and Mr A received just under £50,000 for his shareholding. Taking into account the dividends, Mr A made around £5,000 profit overall.

Mr A complained to Share In. He said he had concerns about the investment he'd made, which he felt Share In was responsible for as PropTech's principal. He said he'd discovered the PropTech representative knew who the flat was being bought from personally. He said he thought the flat had in fact been worth a lot less than £33,000, and doubted whether X had in fact paid that much for it. He therefore thought he was entitled to more money, as his profit on the investment had been reduced by paying an inflated price for the flat.

Share In responded to Mr A to say it had ended PropTech's appointed representative status in the middle of 2020. It apologised for any failings on its part, but directed Mr A to pursue PropTech's representative directly for any further losses he felt he'd suffered. Mr A wasn't happy with that, and came to our service.

One of our investigators looked into things, and in summary she said:

- Share In was responsible for approving the promotional material for the X investment. As PropTech's principal, it was also responsible for that company's arrangement of the investment into X.
- When arranging the investment, Share In/PropTech needed to abide by the regulator's Principles and Conduct of Business Rules. In particular they needed to ensure they had regard for Mr A's interests and treated him fairly, and that they communicated in a way that was clear, fair and not misleading.

- There was sufficient evidence to cast doubt on the explanations PropTech gave about the property purchase that was the intention for the X investment. It had misled Mr A about who the property was to be purchased from. And it hadn't been able to satisfactorily evidence that the price given in the promotional materials was what X in fact had agreed to pay for the property.
- She said that had the information been clear and accurate, she didn't think Mr A would have invested.
- She thought Share In should put Mr A in the position he'd been in had he not invested in X, but done something else with his money instead.

Share In largely accepted our investigator's findings. Although it noted that the top up payment Mr A made towards the investment in September 2020 wasn't for more shares, and was after the time at which PropTech had stopped being an appointed representative of Share In.

Mr A didn't think our investigator's assessment fairly compensated him. He said the SPV had probably really only paid £11,000 for the property. And so he felt he was entitled to the £22,000 difference between that and what PropTech had said had been paid for it.

Our investigator wasn't persuaded to change her mind and so 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.

Having done so, I've reached the same conclusions as our investigator and for largely the same reasons.

At this stage, it doesn't seem in dispute that the information Mr A was given about this investment was incomplete and misleading.

When discussing the details of the investment proposition, Mr A asked PropTech how the person from whom the property was to be purchased was connected to PropTech itself. Mr A was told that there was no connection, and that the opportunity had been brought by a surveyor. That has been shown to be untrue, with the PropTech representative having known the property sellers personally.

Similarly, like our investigator I think the details around the purchase price of the property X was to be buying were unclear and misleading. PropTech told Mr A that X had agreed to buy the flat for £33,000 from someone who'd just bought it at auction for £11,000.

X's account statements show nine payments being made to two people between July and September 2018, for various sums and totalling a little under £30,000. One of these people is the individual who transferred title of the flat to X, although that transfer of title didn't happen until the middle of 2019.

Mr A has made many detailed submissions about the relationship between PropTech and the parties from whom X purchased the flat. I can confirm I've read them in detail, but for reasons I'll come onto shortly I don't think I need to say much about the actual flat purchase itself.

For the purposes of this decision it's enough that the above suggests to me, persuasively, that at the very least the envisaged transaction X was set up to carry out wasn't as straightforward as PropTech suggested to Mr A before he invested. PropTech had an existing relationship with the people X was going to buy the flat from, and doesn't seem to have followed any kind of usual process for purchasing a property. I find it unusual for the payments which are (presumably) for the flat to be made staggered in small and different amounts over a period of time, especially given X's accounts had received Mr A's investment into them, meaning the full purchase price was available.

I'll now turn to what all that means for Mr A's complaint, which involves briefly addressing the roles of the different parties here.

Some of that is complicated by the fact PropTech's representative wore two distinct hats. He was dealing with Mr A as PropTech, promoting and arranging an investment into X. From a regulatory perspective, it's solely the shares Mr A was subscribing to in the SPV that are an "investment". What the SPV then did – buying a flat – and how that came to pass is distinct from a legal and regulatory standpoint. PropTech's representative was also the sole director of X. But his actions as such – and anything done by or on behalf of the SPV itself – aren't matters that PropTech was responsible for, or that were done in carrying on any regulated activity. And so they aren't things relevant to this complaint, which concerns those regulated activities carried on by PropTech for which Share In had taken responsibility.

So to the extent Mr A, reasonably, wants more answers about what happened with the SPV's purchase of the flat or the price it paid for it, these would need to be addressed to the SPV/its director in that capacity.

As I've explained, I think PropTech misled and was unclear with Mr A about the details of the investment proposition. The question then remains what loss this has caused Mr A, if any? In other words, what would Mr A have done had PropTech been clearer, in particular about the identity of the people X was to be buying the flat from?

Our investigator thought Mr A would simply have turned down the investment opportunity, and done something else with his money. On balance, I agree. In his complaint Mr A himself said he would *"not have invested if [PropTech's representative] had disclosed to me the fact that [the people selling the flat to X] were connected to him"*. As this is Mr A's own testimony, made before the outcome of the complaint was communicated to him, I find it particularly persuasive.

Mr A has now argued he still would have invested, but that the flat would only have been purchased by the SPV for £11,000. He's said that we should take into account that the whole transaction was, in his view, dishonest.

I appreciate Mr A's strength of feeling. I acknowledge there are still unanswered questions about the flat purchase itself. But I've also weighed up that this complaint, as I've mentioned, doesn't and can't concern the arrangements between the SPV and those selling the flat to X. I don't have the power to say the flat purchase by X should have been carried out at a particular price. Because that flat purchase wasn't part of the regulated activity of selling Mr A shares in X. And it wasn't conducted by Share In or by PropTech. I acknowledge that given the individual in question (the PropTech representative/director of X) was the same, had Mr A been fully informed he might have been able to negotiate or push for a better deal. But I can't say that with any certainty. And ultimately such an outcome would rely on the people selling the flat to X agreeing to a different price. Those people are far outside the scope of this complaint and our service's jurisdiction.

For these reasons I share our investigator's view that, presented with clear fair and not

misleading information about the investment opportunity in X, Mr A wouldn't have invested at all.

### Putting things right

If Mr A hadn't made the investment in X, I don't know precisely what he'd have done with it. He might have made another investment with PropTech, or done something completely different with it. But Mr A was deprived of the use of that money for whatever he'd have chosen to do with it, for the time it was tied up in the X investment. In circumstances where we don't know what someone would have done with their money, our service's long standing approach is to award a rate of 8% on that money for the time someone's deprived of it. So here I think that rate is a reasonable benchmark to use for calculating any loss Mr A might have suffered.

So to compensate Mr A fairly Share In must:

- Compare the performance of Mr A's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Share In must also pay interest as set out below. I note Mr A has explained that he wouldn't be able to accept any award that takes the form of an interest payment. I've taken this into consideration. I have a duty to say what I think is fair and reasonable in all the circumstances of a complaint. And where there has been a crystallised loss, and that's deprived someone of money, I don't think it would be fair for the responsible party not to pay interest on that sum. Mr A is of course free to speak to Share In directly about that portion of any compensation and arrange for it to be paid to charity or anything else of Mr A's choice it agrees to. So while I note and respect Mr A's reasons for saying he can't accept an interest award, it must necessarily still form part of what I think is fair and reasonable compensation.
- Share In should provide details of the calculation to Mr A in a clear, simple format.

Income tax may be payable on any interest awarded.

Portfolio Name	Status	Benchmark	From ("start date")	To ("end date")	Interest
The money Mr A contributed to the SPV	No longer in force	8% simple	Date of investment	Date ceased to be held	8% simple interest on any loss from the end date to the date of settlement

### **Actual value**

This means the actual amount paid from the investment at the end date including dividends.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return

using the benchmark.

Mr A's investment was paid in stages. Any additional sums paid into the investment should be added to the fair value calculation from the point in time when they were actually paid in.

For clarity, I include in these sums the £3,000 Mr A paid in September 2020. While this wasn't a subscription for more shares (and was made after PropTech ceased to be Share In's appointed representative) I'm satisfied it was a loss Mr A suffered as a result of Share In's errors and therefore ought to be compensated. Mr A wouldn't have had to make that payment had he not invested in X, so I think it should be included in the fair value calculation when assessing his loss.

### **My final decision**

For the reasons I've given I uphold this complaint and direct Share In Ltd to pay Mr A compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 December 2023.

Luke Gordon  
**Ombudsman**