DRN-4220421

The complaint

Mrs J complains that Huddle Capital Limited (Huddle), an appointed representative (AR) of rebuildingsociety.com Ltd (ReBS), arranged an investment via an Innovative Finance Individual Savings Account (IF ISA). Mrs J has lost money on the investment and thinks that ReBS is responsible for her loss. She also says that Huddle failed to set up an online platform for the investment as it was supposed to do.

What happened

Mrs J brought this complaint to us jointly with her husband – Mr J. However, they each made separate investments that are being complained about and so I will deal with Mr J's complaint separately to Mrs J's. This decision looks only at Mrs J's complaint – although the factual circumstances overlap and so Mr J is also mentioned in this decision.

During 2018, Mrs J and Mr J spoke with an adviser, Mr W. The say they don't know whether Mr W was working for Huddle, or independently. They say they were advised to transfer their existing ISAs (which were held with high street banks) to a "Huddle IF ISA". They say they were told that the Huddle IF ISA had a five-year fixed term and that they would receive a return of 7% per year. Mrs J and Mr J were also told they'd receive log-in details to view their investments on an online platform.

In around March 2018, Mrs J applied to transfer £5,000 from her existing ISA to a Huddle IF ISA. Mr J also made an application for around £15,000. We don't know the precise date, but it appears that the funds were transferred to the Huddle IF ISA and then invested into a bond/loan with CGrowth Capital Bonds Limited (CGrowth) a short time later.

In June 2018, someone at Huddle - Mr C - contacted Mrs J and Mr J by email to tell them that the loans with CGrowth were complete. But Mr J queried the investment amounts:

> *"Please be advised that my initial investment is £15291.41p and not £9291.41p as stated*
>
> *Can you please amend the notification with immediate effect and also provide the investment login details required for me to access my account online, to keep an eye on how my investment is performing, as per our conversation."*

Mr C replied:

> *As discussed, I have checked the details you have provided me with and confirm that the documentation sent to you at [….] was incorrect.*
>
> *Please disregard those emails and the associated loan agreements.*
>
> *Attached now are the correct loan agreements confirming investments into Cgrowth as follows:*
>
> *1. [Mr J] - £15,291.41; and*

2. [Mrs J] - £5,000.

Would you be available tomorrow around lunch time, as I would like to talk you through the platform sign up at https://huddlecapital.com/ - it is better if you personally sign up. As we have already carried out our on-line ID and AML checks, I will be able to approve and open the platform accounts immediately. As discussed, there has been a technical glitch with the platform and we are in the process of getting the Cgrowth loan loaded up, this is still a few days away, but once your account is open I will explain how it all works and then when the loan is uploaded, we can immediately link your investment. If some other time is better tomorrow, please let me know and I will do what I can to accommodate.

Despite ongoing correspondence with Mr C, Mrs J and Mr J didn't receive log-in details or further communication. And they said they also later (in around 2020) became concerned because they learned that their investments had been made into "peer-to-peer" lending – they say they weren't told about this before.

It now looks like the CGrowth investment has failed completely.

Mrs J and Mr J referred a complaint to our service about ReBS, as Huddle's principal. They effectively said that the Huddle IF ISAs had been mis-sold to them and that Huddle hadn't set things up as promised and had provided poor service and communication. They wanted a refund of the full amounts they'd transferred to the Huddle IF ISAs.

ReBS said it wasn't responsible for Mrs J and Mr J's losses. Briefly, it said that it (and therefore Huddle) was regulated to "operate an electronic lending platform" – effectively a peer-to-peer platform for lending. But Mrs J and Mr J hadn't been registered on the Huddle peer-to-peer platform that Huddle was authorised to operate. It said that it was aware that for a short while, outside of operating a peer-to-peer lending platform, Huddle had sold unregulated mini-bonds such as the CGrowth loans. ReBS said it hadn't issued or approved the promotion of these bonds and so it wasn't responsible for Mrs J and Mr J's complaints.

Our investigator didn't think we had jurisdiction to consider the complaint against ReBS. He felt that Huddle had been carrying out a regulated activity when it made arrangements to transfer Mrs J and Mr J's existing ISAs to the IF ISAs. But he didn't think ReBS was responsible for Huddle's actions. That's because he noted that the AR agreement between ReBS and Huddle didn't authorise Huddle to give investment advice or arrange investments. He didn't think that there was any other basis to hold ReBS responsible for the investment losses.

Mrs J and Mr J disagreed. They felt that Huddle had been acting with ReBS' authority. And in its communications with Mrs J and Mr J, ReBS had referred to itself as Huddle's principal – it hadn't referred to any limitations on Huddle's activities.

Mrs J's complaint was then passed to me to consider. I issued a provisional decision explaining why I thought that ReBS was responsible for a regulated activities conducted by Huddle in connection with its electronic lending platform – but not anything relating to the investment in CGrowth or the IF ISA. I said that Huddle had provided poor service in relation to the platform and so ReBS (as Huddle's principal) should pay Mrs J some compensation for the distress caused to her by this.

Mrs J (via a representative) responded to ask that I clarify and confirm that she did not know that Huddle was engaged in peer-to-peer lending until recently. Mrs J also said:

> *"The full scope of advice received regarding this 'fixed 5-year ISA at 7%' and the details regarding log ins and customer rights to view their money etc was advised by [Mr C] at Huddle Capital. [Mr J] spoke to [Mr C] several times over a period prior to transferring the money across and was given advice and assurances by [Mr C] - at no time during such contact was [Mr/Mrs J] made aware that the money was to be used for any 'peer to peer' lending and they had no knowledge in 2018 that Huddle Capital had a peer to peer lending business. Mr W introduced [Mr & Mrs J] to [Mr C] at Huddle but the advice and information given to incite the investment was conducted by Huddle."*

ReBS didin't agree with my decision. It said that the one thing I had said they were responsible for – poor service in relation to the electronic platform - was not a regulated activity. It also said that it had only accepted responsibility for Huddle's acts in relation to approved financial promotions – and this complaint did not involve any approved promotions. It said it had sympathy for Mrs J – but it wasn't responsible for what had happened in respect of her investment.

Why I can look into this complaint

I've considered all the evidence that's been provided. Having done so, I am of the view that we do have the power to consider the merits of some aspects of this complaint.

The Financial Ombudsman Service can't look at all complaints. Before we can consider a complaint, we need to check, by reference to the Financial Conduct Authority's (FCA's) Dispute Resolution Rules (DISP) and the legislation from which those rules are derived, whether it's one we have the power to look at.

DISP 2.3.1R says we can:

> *'consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on…regulated activities…or any ancillary activities, including advice, carried on by the firm in connection with them.'*

Guidance for this rule at 2.3.3G says that:

> *'complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or agent for which the firm…has accepted responsibility).'*

And Section 39(3) of the Financial Services and Markets Act 2000 (FSMA) says:

> *'The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.'*

So, taking the above into account, to decide whether ReBS is responsible here, there are three issues I need to consider:

- What are the acts Mrs J has complained about?
- Are those acts regulated activities or ancillary to regulated activities?
- Did ReBS accept responsibility for those acts?

What are the specific acts Mrs has complained about?

Mrs J effectively says she was mis-sold the Huddle IF ISA, that the online platform that she was promised wasn't set up and that she wasn't told her money would be invested in in a "peer-to-peer" lending arrangement. She also complains about poor customer service.

Are those acts regulated activities or ancillary to regulated activities?

Regulated activities are those activities that are specified in Part II of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO). The only activities that I think could possibly be relevant to this complaint are:

- Advising on the merits of buying or selling a particular investment which is a security or a relevant investment (Article 53 RAO).

- Making arrangements for another person to buy or sell or subscribe for a security or relevant investment (Article 25 RAO).

- Operating an electronic system in relation to lending (Article 36H RAO).

CGrowth is likely to be the kind of investment that is capable of giving rise to a regulated activity under the RAO. Mrs J has said she and Mr J only met with Mr W. I think it's likely that Mr W promoted the investment, gave advice to Mrs J and Mr J and made arrangements for the investment – as they've referred to being advised by Mr W about investing in a 7% annual return, five year arrangement. That matches with the CGrowth prospectus that I've seen.

The email from Mr C at Huddle – in which he attaches completed loan documentation - suggests that Huddle may also have arranged elements of the CGrowth investment.

Overall, I think regulated activities under Articles 25 and 53 RAO took place in connection with the CGrowth investment.

We don't have a lot of evidence about the IF ISA. It appears that Mr W provided Mrs J and Mr J with forms for the IF ISA. And I note that the application forms suggest that the IF ISA was one managed not by Huddle's principal - ReBS – but a separate business called Access. Overall, I think it's probable that Mr W gave advice and made arrangements for the IF ISA.

Mrs J says that Mr C of Huddle gave advice about the IF ISA. This can't be verified by reference to other evidence. But Huddle was likely involved in setting it up as its name appears on the paperwork.

But an IF ISA isn't a security or relevant investment under the RAO. So giving advice or making arrangements for the IF ISA in isolation wouldn't be a regulated activity under Articles 25 and 53 RAO. Nonetheless, I think any activities in relation to the IF ISA were *ancillary* to the regulated activities undertaken in connection with the CGrowth investment. The two things went together – the CGrowth investment was likely made via or facilitated through the IF ISA.

I am also satisfied that the regulated activity under Article 36H - operating an electronic system in relation to lending - took place. We have been provided with an email chain from June 2018 in which Mr C at Huddle reassures Mr J that the "platform" sign up process was being progressed and that both Mrs J and Mr J's loan in CGrowth would be "loaded" up. As set out above, Mr C wrote:

"Would you be available tomorrow around lunch time, as I would like to talk you through the platform sign up at https://huddlecapiltal.com/ - it is better if you personally sign up. As we have already carried out our on-line ID and AML checks, I will be able to approve and open the platform accounts immediately. As discussed, there has been a technical glitch with the platform and we are in the process of getting the Cgrowth loan loaded up, this is still a few days away, but once your account is open I will explain how it all works…"

To give more context to this, it's helpful to set out some detail about Huddle's business model. ReBS' website says of Huddle:

The Huddle Capital team were looking for a quick way to get their peer-to-peer lending platform to market, aware that the direct FCA authorisation would be a lengthy and arduous process. They wanted to launch their platform as soon as possible, so they came to us to shortcut the process and reduce the internal compliance workload.

The Huddle team wanted to fulfil their vision, growing their loan book and securing a position within the UK's peer-to-business lending market, with a focus on small- to medium-sized local businesses. Their authorisation as an AR allows them to keep their costs down by providing access to an experienced compliance team. By becoming an AR, Huddle, as a new entrant in the market, has been able to step into an increasingly competitive market quickly, without engaging valuable time and resources in a lengthy authorisation process. They do so under the guidance and permissions of an existing firm who has invested considerable time, resources and energy to achieve FCA authorisation.

Application & Onboarding

At the beginning of the process, Appointed Representatives are required to submit a detailed application form. This is reviewed by our team, and detailed background, competency and feasibility checks are carried out, not only for the company, but also its directors and key staff. The rebuildingsociety.com board then decides whether or not to onboard the prospective AR.

Following the confirmation that Huddle was approved by rebuildingsociety.com, the thorough, in-depth onboarding process began. This had to be completed before Huddle was allowed to launch. The two companies worked together closely to put in place the systems and processes necessary to a run a peer-to-business platform, and Huddle's directors and staff were taken through a detailed training course on P2P and P2B regulation.

The rebuildingsociety.com team then reviewed Huddle's operational systems, technology and competency, before completing the final sign off. This is a requirement before the AR can begin onboarding clients and trading.

The rebuildingsociety.com worked hard to make sure that the necessary systems and processes were in place ahead of the launch, and that the Huddle team understood their responsibilities.

…

Up & Running

The onboarding and setup of the Appointed Representative's site is just the beginning of the AR-Principal relationship. Since the launch of the platform, the rebuildingsociety.com and Huddle teams have been in contact daily, ensuring that key processes, such as the management of client money and client communications, are handled correctly and in line with regulations.

Each month, Huddle produces a report for rebuildingsociety.com. We are obliged to report back to the FCA on the progress of all our ARs, a responsibility that is taken very seriously by the whole team.

Onwards & Upwards

The Huddle site is now live, attracting borrowers and lenders and encouraging them to "come together to make asset backed transactions happen."

Following a period of bedding in and growth, Huddle will consider applying for their full authorisation from the FCA. In the meantime, we will continue to be their Network Principal, answering questions, resolving queries and ensuring that they comply with all relevant rules and regulations.

About Huddle Capital

Huddle Capital is a brand new, Leeds-based peer-to-business lending platform, born from existing finance business, Access Commercial Finance. The team behind the new company includes entrepreneurs, solicitors and financial experts and professionals.

Taking this into account, I don't think there can be any serious doubt that what Huddle was offering to Mrs J and Mr J is the operation of a peer-to-peer arrangement via an electronic system (or "platform" as it was described to Mrs J and Mr J) for lending. And it appears that the lending was to be the loan investment that had already been made – presumably via the IF ISA managed by Access - from each of them (as individual lenders) to CGrowth Limited (the borrower) that would be "loaded" on to the platform.

In response to my provisional decision, ReBS seems to be arguing that the Article 36H activity does not include unfulfilled promises by Huddle to Mrs J to set up a platform. However, I think any administration or maladministration (including poor service) relating to the platform would be an act which is ancillary to the regulated activity under Article 36H - and such ancillary activities are within our jurisdiction.

So I think that the complaint does involve regulated activities and/or activities which are ancillary to those activities. However, I now need to consider whether ReBS can be said to have accepted responsibility for these acts. I've gone on to explore this further below.

Did ReBS accept responsibility for those acts?

As I've set out above, Section 39(3) FSMA says:

> *'The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.'*

This means that ReBS is responsible for complaints arising from anything done or omitted by its AR in the carrying on of business for which ReBS accepted responsibility.

As I've explained, Mr W likely gave advice and made arrangements for the CGrowth investment and the IF ISA. But I've seen no evidence that Mr W was associated with either Huddle or ReBS. So there is no basis for me to conclude that ReBS accepted responsibility for any acts undertaken by him.

There no compelling or persuasive evidence (or allegation) that Huddle advised on or promoted the CGrowth investment. I think Huddle *possibly* undertook arrangements for the CGrowth investment and ancillary activities in connection with the arrangement of the IF ISA. And Huddle certainly undertook an Article 36H activity and/or activities ancillary to that activity. So I've looked closely at the AR agreement to understand what ReBS had authorised Huddle to do and what it therefore accepted responsibility for.

Section 1 says

> *1.1 This Appointed Representative Agreement ("the Agreement") sets out the basis under which the AR may operate a Peer-to-Peer Platform (as defined in this Agreement) in the United Kingdom under the supervision of the Principal.*
>
> *1.2 Rebuildingsociety.com Ltd ("The Principal") is a firm authorised and regulated by the Financial Conduct Authority (FCA), Number 656344, having permission to operate an electronic loan based crowdfunding platform, Management of Client Money and Assets and Approve Financial Promotions under the FCA rules. Its regulatory disclaimers state that it provides advice in respect of its own products and services but does not provide general investment advice to retail clients, and accordingly that any prospective retail client is recommended to obtain independent investment advice from a qualified independent financial adviser.*

Section 3 sets out 'Appointment and the Services'. This includes the following:

> *3.1 The AR may, in accordance with the procedures set out by The Principal distribute Non-Investment Financial Promotions that are approved by The Principal relating to the Products and Services.*
>
> *3.5 The Principal does not accept any responsibility for any other activities of the AR including, but not limited to any Consumer Credit Activities or Equity Crowdfunding Activities.*

The AR agreement defines 'products' as:

> *'Products means Products offered under P2P Agreements and through the operation of a loan based crowdfunding platform.'*

"Services" isn't defined despite it being capitalised and appearing in clause 3.1 and elsewhere in the agreement.

Section 4 sets out the limitations on Huddle's activities. I've set out the relevant terms below:

> *'4.2 The AR shall not carry on any Regulated Activity, other than that of an AR, which would conflict with activities for which the Principal is authorised.*
>
> *4.4 The AR will not make or distribute any Financial Promotions (or any kind of financial promotion) in relation to its Products or Services without these having been expressly approved per the AR and the Principal's Financial Promotion Policy and Processes. Within 5 Business Days of receipt of a draft Financial Promotion, the Principal will provide its approval or disapproval in*

writing (by email). If the Financial Promotion has been declined, full reasons for this will be provided.'

My view is that Huddle was authorised under the agreement to operate a peer-to-peer platform – the Article 36H activity. This doesn't seem to be in dispute and is also reflected in the extracts from the ReBS website that I've quoted in detail above. And I think this necessarily also includes acts conducted by Huddle that are ancillary to the operation of such a platform – such as communications with customers like Mrs J about setting up the platform.

I think Huddle was also likely to have been authorised to distribute financial promotions that were approved by ReBS. But there's no evidence in this case that Huddle did give advice or distribute a financial promotion - approved or otherwise. That seems like it was done by Mr W.

ReBS seems to now suggest that the operation of the Article 36H platform was restricted transactions involving pre-approved financial promotions and that the C Growth investment was not approved. And therefore it says any acts relating to the Article 36H activity in this case was not approved. But I don't think that is clearly reflected in the AR agreement. And in any event, any breach of such a "pre-approval" requirement would, in my view, be a breach of *how* certain activities are performed rather than *what* activities can be performed by an adviser. In the *Anderson & Ors v Sense Network Ltd [2019] EWCA Civ 1395* case, the Court of Appeal drew a distinction between these types of restriction. The breach of the latter kind of provision takes the AR's conduct out of the principal's ambit of responsibility under section 39(3) FSMA, but breach of the former doesn't.

What is not authorised in the agreement is any form of advice or arrangements for investments such as CGrowth or indeed any other investments at all. And there is also no mention of authority to undertake any acts in relation to an IF ISA.

So, taking into account all of the above, my conclusion is that we do have jurisdiction to consider Mrs J's complaint against ReBS in connection with acts that relate to the Article 36H regulated activity – including ancillary activities. That is the only act of Huddle in this case that it was authorised by ReBS to undertake under section 39(3) FSMA. In the circumstances of this complaint, I think this essentially goes to whether Huddle (and therefore ReBS) treated Mrs J fairly when offering to and then failing to set up an online platform for the investment in CGrowth. I think it also encompasses whether or not Huddle provided Mrs J with poor service relating to the platform.

We do not have jurisdiction to consider the complaint against ReBS about any advice or arrangements for the CGrowth investment or the IF ISA.

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.

There is limited evidence available to me about what happened at the time. But what we do have in the form of the email exchange from 2018 suggests that Mrs J and Mr J were promised that an online platform would be set up for them by Huddle and that this would allow them to monitor their investments in CGrowth.

There is no dispute that Huddle did not in fact put such a platform in place as they should have done or promised to do. And it appears that the communication between Huddle and Mrs J and Mr J was poor as no reasons were given for this failure and there were no updates about what was being done. This has undoubtedly caused Mrs J distress and inconvenience as it's contributed to her having little or no information about what was happening or has happened with her investment.

However, I don't think this means that ReBS is responsible for reimbursing Mrs J for the entire amount of the investment she made. As I've explained above, ReBS is not responsible for any advice and arrangements relating to the CGrowth investment or the IF ISA. And it appears that Mrs J and Mr J had committed to making the CGrowth investment before Huddle's involvement with them and the promise to set up a platform.

It looks likely that the investment may have failed and that has or will potentially cause losses to Mrs J. But it would not be fair or reasonable to say that ReBS's failures in connection with the platform it offered means that ReBS should compensate Mrs J for the investment loss.

Taking this all into account, I think it is fair for ReBS to pay Mrs J £350 for the distress and inconvenience caused to her by Huddle's poor service in connection with the electronic system it said it would set up and failed to do.

My final decision

For the reasons I've given above, my decision is that we do have jurisdiction to consider some limited aspects of the complaint by Mrs J against rebuildingsociety.com– that is the failure by its AR Huddle to set up the electronic system for lending.

rebuildingsociety.com Ltd must pay Mrs J £350 for the distress and inconvenience caused to her by this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 8 August 2023.

Abdul Hafez
Ombudsman