

The complaint

Ms C complains that an appointed representative (“AR”) of Share In Ltd (“Share In”) failed to conduct sufficient due diligence on two property development projects promoted on AR’s platform. She feels Share In should have warned her about previous failed projects and a conflict of interest between a senior manager of AR and the companies she invested in.

What happened

AR was an appointed representative of Share In between 16 November 2016 and 20 July 2020. AR promotes investment opportunities on its crowdfunding platform, by way of investment memorandums (“IM”). Investments are made in companies set up as special purpose vehicles (“SPVs”) which own and develop properties. The intention is that in return for their investments, investors have their shares purchased back at a higher rate on completion of the development.

Ms C invested £5,000 in a company I’ll refer to as “Company A” in August 2018, through AR’s platform. Company A’s property development was expected to be completed by November 2019. However the project didn’t complete on time and Company A entered into administration in March 2023.

Ms C also invested £6,000 in a company I’ll refer to as “Company B” in August 2018. Company B’s property development was expected to be completed by April 2019. This project also didn’t complete on time and a receiver was appointed in January 2022.

Ms C made a very detailed complaint to AR. In summary, she said:

- AR had a responsibility to carry out due diligence on the projects it promoted and failed to disclose issues related to Company A and Company B.
- There was a conflict of interest as one of the senior managers at AR was also the director of both Company A and Company B.
- AR should have carried out due diligence on that director, including the companies they were previously a director of.
- She had made her investments in August 2018 but share certificates were not issued and registered at Companies House until May 2021 for Company B.
- There were anomalies with the accounts filed at Companies House in 2019 and 2020, as the accounts did not accurately reflect the shareholdings and investments.

Share In looked into Ms C’s complaint but didn’t think it and AR had acted unfairly. In summary, it said:

- AR had carried out an appropriate standard of due diligence on the projects before promoting them on its platform.
- It was not AR’s responsibility to check an investee’s previous projects, unless a claim is made about previous projects in the IM.
- It had checked whether the director of Company A and Company B was a disqualified director at the time of the promotions and confirmed that they weren’t.
- It found no instances of conflict of interests.

- Share In has no responsibility to ensure share certificates are issued or rights enforced. This was the responsibility of the issuer.
- It could not see how Ms C's losses related to the delay in her investor registration on Companies House.

Ms C remained unhappy and so she referred her complaint to this service for an independent review.

One of investigators considered Ms C's complaint but didn't uphold it. In summary, they said:

- Regulations meant that AR, as Share In's appointed representative, was required to perform due diligence on the essential information presented in the IMs and to ensure any claims made were authentic by way of a basic plausibility test.
- AR was also required to make Ms C aware of the extent of which performed due diligence of the projects, and for the outcome to be sufficiently detailed to allow her to weigh up the risks and benefits of investing.
- AR had a three-step due diligence process which the investigator was satisfied was followed for both projects.
- AR wasn't required to conduct checks on the previous projects involving the same director as no financial details were included in the IMs. The only information provided about the projects was that they completed, sold or were refinanced.
- AR's terms made Ms C aware that it could provide some or all of the directors to the investee companies and so they didn't think a conflict of interest existed.
- Share In can't predict the future so if the issuer didn't execute the paperwork related to the change of directors, that's not something that Share In was responsible for – it was the Issuer's responsibility.

Ms C didn't accept the investigator's findings and provided a comprehensive response. In summary, she said:

- AR should have checked and disclosed rate on investment ("ROI") on prior projects in the IM in order to be satisfied that the advertised ROIs for Company A's and Company B's projects were plausible.
- AR's overall review fell short in providing any confidence that the promoted ROIs could be achieved.
- AR's due diligence on the director should have gone beyond checking whether there was a director disqualification and made some allegations that there had been a history of fraudulent activity with previous companies.

As Ms C remains unhappy, 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.

I hope Ms C doesn't take it as a discourtesy that I won't be responding to each submission or every point she has raised. The purpose of my decision isn't to do that, but rather to explain my findings on the key issues. The crux of Ms C's complaint is that Share In failed to perform sufficient due diligence on her two investments and as such, failed to disclose issues it knew or ought to have known.

For ease of reference, I shall only refer to Share In going forwards as it is the respondent for this complaint. Any mention of Share In throughout my findings will also include AR.

To be clear I can only consider the obligations Share In had towards Ms C as an investor when promoting the investments. I can't consider any actions of Company A and Company B. With this in mind, I've considered Share In's obligations.

At the time of promoting the investment opportunity, Share In 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."

Share In 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 the IMs, Share In 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 Ms C to invest in Company A and Company B, it would continue to be acting in her best interests.

In order to satisfy itself of the fair, clear and not misleading nature of the claims or assertions made in the IM, Share In 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 note that in its policy statement PS14/4 the FCA said of the due diligence expected of crowdfunding firms:

"we expect sufficient detail to be provided to give a balanced indication of the benefits and the risk involved, including whether or not any due diligence has been carried out on an investee company, the extent of the due diligence and the outcome of any analysis."

In 2015 the FCA issued a review of the regulatory regime for crowdfunding where it said:

"Firms need to provide investors with appropriate information, in a comprehensive form, so that they are reasonably able to understand the nature and risks of the investment, and, consequently, to make investment decisions on an informed basis".

One of the areas of concern the FCA identified was a situation where a platform provided:

“insufficient, omitted or the cherry-picking of information, leading to a potentiality misleading or unrealistically optimistic impression of the investment.”

So Share In needed to ensure any information it gave Ms C about Company A and Company B was fair, clear, and not misleading, and enabled her to make an informed decision whether to invest, armed with the knowledge of the nature and risks of an investment into the SPVs.

Ms C has raised several concerns which are all regarding the level of due diligence Share In conducted. So it's important to set out what checks Share In said it would complete and determine whether it ought to have done more.

Share In says it has a three-step due diligence process which it followed for both of Ms C's investments. Share In says it:

“... examined the overall funding package available to the developer; reviewed the project finances to ensure that there were reasonable and acceptable levels of resources to overcome reasonable cost over-runs; and reviewed all statements made in the developer's marketing statements.”

Share In has provided evidence of the due diligence that it undertook, and I'm satisfied it supports that Share In did follow these steps.

I understand Ms C feels Share In should have conducted further checks, including on the financials from previous projects by the developer as well as a detailed review of the director of Company A and Company B. However, I don't agree as Share In was only required to conduct due diligence on the information included in the IMs.

Having reviewed the IMs, there are no financial details provided on past projects, the only details given were whether projects were completed, sold or re-financed into Share In's portfolio.

I appreciate that Ms C thinks Share In should have conducted checks on this and disclosed the financials of previous projects, to allow her to understand the likelihood of her achieving the advertised ROIs on the two investment opportunities. However, I'm satisfied Share In checked the advertised ROIs through its due diligence as it has provided the financial information for both projects which allowed it to conduct plausibility tests.

The key point here is that whilst previous projects' ROIs may have been a useful indicator for Ms C to have had sight of before making her investment decisions, statements about the financials of previous projects weren't provided in the IMs and so Share In wasn't required to conduct checks on this. Whereas financial information about the current projects were and so Share In had to conduct due diligence on this, which I'm satisfied it did. If Ms C felt financial information about the developer's previous projects was information she required, in order to make an informed investment decision, then she ought to have requested this before deciding to invest.

I also understand Ms C believes Share In should have conducted a detailed review of the director of Company A and Company B and that a conflict of interest involving them existed. Share In says it did conduct checks on the director, including checking whether they were a disqualified director at the time of the promotions and no issues were discovered. Whilst the director of Company A and Company B may have been the director of other companies, I don't think this was information which needed to be disclosed to Ms C before investing. I say

this as Share In needed to ensure information was fair, clear and not misleading about Company A and Company B only. Furthermore, information regarding the director was readily available on the Companies House website and if Ms C had concerns about the connection between Company A's directors and other companies then she ought to have considered this before deciding to invest.

Furthermore, Share In's terms and conditions explain that:

"8.1 [Share In] or its associates may provide some or all of the directors to the borrower to help it comply with its obligations to investors."

"8.2 If there is a default on your investment in respect of a loan in which we have a financial interest, we will seek to procure the appointed independent directors to the borrower or independent advisers to seek recovery if we deem that our interests conflict with yours. In normal circumstances, we anticipate that our interests will be aligned with the interests of investors in seeking a full recovery and keeping recovery fees to a minimum."

So Ms C ought to have been aware that connected parties of Share In could also work for the companies she invested in and so I'm not persuaded there existed a conflict which wasn't disclosed.

It's clear to me that the issue which underpins Ms C' complaint is about the actions of the director Company A and Company B. She has made allegations of fraudulent activity and strongly believes that these actions have led to her investments failing. Whilst it's not my role to determine whether fraudulent activity occurred, I don't think it would be fair or reasonable to find Share In responsible for any mismanagement by the director of Company A and Company B. I say this as I don't think Share In could have reasonably foreseen this happening. I appreciate Ms C has explained that an administrator's report for one of the director's previous companies suggests a misappropriation of funds. However, as I've explained above, Share In had checked to see whether the director was disqualified before promoting the two investments and I don't think it could have reasonably known there was any issue with the director.

On a final note, I understand Ms C has raised concerns regarding delays in receiving her share certificates and information not correctly registered at Companies House. I have nothing further to add to what the investigator has already provided other than to conclude that I'm not persuaded that any irregularities or delays have caused Ms C a financial loss for me to consider and such activities are the responsibility of the issuer (Company A and/or Company B).

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 Ms C to accept or reject my decision before 29 February 2024.

Ben Waites
Ombudsman