DRN-4435027

The complaint

Mr P complains that Crowdcube Capital Limited trading as Crowdcube didn't conduct appropriate due diligence in the event of a company he'd invested in through the platform becoming publicly listed on a stock exchange.

What happened

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

Mr P invested €19.42 in a Spanish company ("Company A") through Crowdcube's crowdfunding platform. In return for his investment, Mr P received shares in Company A in October 2021. These were held by Crowdcube's nominee business on behalf of Mr P.

In early 2022, Crowdcube was approached by Company A regarding a possible Initial Public Offering ("IPO"). On 29 June 2022, Company A became listed on the BME Growth market in Spain. This meant that Mr P should have been able to find a secondary market for his shares. However, Crowdcube doesn't have the ability to trade listed shares following an IPO and so it had to find a partner that would assist in transferring shares from the nominee directly to the broker accounts of beneficial owners - allowing Mr P to access his shares.

Mr P was unhappy as he felt Crowdcube ought to have had plans in place for a potential IPO before allowing him to invest in Company A.

In July 2022, Crowdcube entered into an agreement with a Spanish partner ("B") to assist with this and investors were asked to provide broker details according to the requirements of B in August 2022. Mr P provided details for a UK broker account and in December 2022. However, B informed Crowdcube that it could not transfer to this UK broker account as the broker would not accept the shares.

Unhappy with the delays and inability have his shares transferred, Mr P referred his complaint to this service for an independent review.

In May 2023, Mr P provided details for a new broker but again B informed Crowdcube that this broker wasn't suitable. On 15 May 2023, Crowdcube emailed Mr P and provided a list of brokers who had successfully accepted Company A share transfers. Mr P opened an account with one of these brokers, but it has since transpired that the correct broker was the Spanish entity and not the UK entity Mr P had contacted.

Following the referral of the complaint to this service, Crowdcube wrote to Mr P with a final response in September 2023. In summary, it said:

- An IPO is one of the most complex exit situations for any company that raises through the platform, particularly within a foreign jurisdiction.
- It acknowledged that the process was longer and more complicated than initially

anticipated and the frustration this has caused Mr P to experience.
- However, throughout the process it has not deliberately sought to obstruct or prevent him from receiving his shares.
- Accessing the shares required a partner in Spain willing to work with it, complete the substantial initial due diligence requirements of that partner (which took 5 months) and then working within the requirements that partner set.
- It has worked to find this partner and guide investors through this system and requirements, and done so successfully for the vast majority of Company A investors. However it is dependent on each individual setting up a broker and providing the right information.
- It promised to continue to work with B and Mr P's latest broker to get access for Mr P to his shares.

One of our investigators considered Mr P's complaint and partially upheld it. In summary, they said:

- Crowdcube's role is to oversee the process, communicate with investors, and work with partner institutions, such as B, to ensure the accurate and compliant transfer of shares from the crowdfunding platform to investors' broker accounts. They were satisfied Crowdcube is doing this.
- Whilst they understood Mr P has been waiting more than a year to access his shares, as he doesn't intend on selling his shares immediately, there's no financial loss or missed opportunity in terms of selling his shares at specific market prices.
- They acknowledged Crowdcube should provide fair, clear, and not misleading information and it had failed to do so when it provided the list of acceptable brokers. They said Crowdcube ought to have clarified that it was the Spanish entity that Mr P needed to contact.
- Crowdcube should pay Mr P £150 for the distress and inconvenience caused.

Crowdcube accepted the investigator's finding but Mr P didn't. He said he wouldn't have initially invested had he been made aware that he would eventually have to open a Spanish account in order to access his shares. He remained unhappy that Crowdcube conducted no due diligence prior to the fundraising to see how the shares would be transferred to a UK broker.

As no agreement could be 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, Crowdcube 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.”

Crowdcube 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 pitch, Crowdcube 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 Mr P to invest in Company A, it would continue to be acting in his best interests.

In order to satisfy itself of the fair, clear and not misleading nature of the claims or assertions made in the pitch, 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 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.”*

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. 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 P 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 Crowdcube 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 preforms on investee companies. Looking at Crowdcube’s website, it makes it clear what due diligence it performs in its due diligence charter. It explains:

> *"The following due diligence is carried on each company before the pitch is open to investment: […] to fact check all statements and claims made in the pitch text to ensure it is fair, clear and not misleading by obtaining, where possible, independent evidence."*

Considering the above, it's clear that Crowdcube's due diligence needed to be sufficient to satisfy itself on the essential information on which the promotion of Company A was based. Crowdcube also needed to make Mr P aware of the extent of which it performed due diligence on Company A, let him know the outcome of this and for it to be sufficiently detailed to allow him to weigh up the risks and benefits of investing in Company A.

The crux of Mr P's complaint is that Crowdcube didn't conduct sufficient due diligence to understand how investors could access their shares in the event of an IPO of Company A's shares. However, there is no mention of Company A's plans for an IPO contained within the pitch. Therefore, as Crowdcube's due diligence was limited to the information contained within the pitch, I don't think it was fair or reasonable for Crowdcube to conduct checks on this. Whilst I appreciate Mr P thinks Crowdcube ought to have planned for this eventuality, I don't think Crowdcube was able to make arrangements until Company A made it aware of its plans for an IPO. This is because there are several variables which Crowdcube would need to consider, such as which stock exchange Company A would list on, that country's regulatory requirements and which partner it could work with to facilitate the brokerage of investors' shares. So I don't think Crowdcube has acted unfairly in not conducting due diligence on the possibility of an IPO.

Clearly the IPO was a complex exit situation for Crowdcube to deal with, mainly due to it being within a foreign jurisdiction. There is no regulatory requirement for Crowdcube to complete the exit within a specified timeframe. However it has acknowledged that it has taken longer than it initially anticipated. I agree with the investigator's findings that this timeframe fell outside of Crowdcube's control and I'm persuaded Crowdcube has been acting in Mr P's best interests to try and facilitate the brokerage of his shares. I understand Mr P's frustration as he's been fully co-operated with Crowdcube's requests and has suggested several UK brokers to use. But unfortunately, it has been B who has declined to accept these brokers which is beyond Crowdcube's control. However, I agree with the investigator that the email Crowdcube sent to Mr P listing the accepted brokers was misleading. This is because it should have explained that the particular broker was the Spanish entity and not the UK entity Mr P approached. The investigator has suggested an award for £150 for the distress and inconvenience caused by this misinformation, which Crowdcube has accepted. I don't think the offer is unreasonable and is substantially more than Mr P initially invested and so I won't be recommending any further compensation be awarded.

Crowdcube have recently confirmed to this service that other Crowdcube investors based in the UK have been able to open an account with the Spanish entity and have access to their Company A shares. So this seems to be a viable option for Mr P to pursue.

Putting things right

Crowdcube should pay Mr P £150 for the distress and inconvenience caused.

My final decision

My final decision is that I partially uphold Mr P's complaint against Crowdcube Capital Limited trading as Crowdcube.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 3 January 2024.

Ben Waites
Ombudsman