

The complaint

Mr C complains he was misled about the details of a property investment he made through Crowd2Let.com (C2L), which was an appointed representative (AR) of Prosper Capital LLP.

What happened

C2L ran a crowdfunding platform. Investors could buy shares in companies (special purpose vehicles, or SPVs) set up with the express intent of investing in something. Here, that was generally property.

So, investors bought shares in the SPV, and the SPV purchased a property. Income (for example from rent) could be distributed to investors through dividends, and the shares could be sold to generate a capital return when the properties were sold at the end of the term.

Mr C has made several investments since 2017, but more recently he became concerned about the sale of certain properties held within the SPVs, and he made further enquiries. This led to him having doubts about the legitimacy of the service as it appeared C2L didn't purchase some of the properties as it claimed, and the prices listed on the website are significantly higher than the actual purchase prices of the properties. C2L offered to purchase Mr C's shares in some of the SPVs back off him and credited his bank account with the funds. But he remained unsatisfied with the responses he received from C2L to his concerns. In June 2023, Mr C raised a complaint with Prosper Capital as the principal firm responsible for its AR.

Mr C complained that inadequacies of C2L's business model have resulted in significantly lower returns than initially represented. He said misleading representations about anticipated returns have caused significant financial loss and distress.

Prosper Capital issued a response to the complaint. But Mr C didn't feel the response answered all of his concerns, so referred his complaint to this service for an independent review. When the complaint was with this service an offer was communicated by Prosper Capital to this service. This essentially involved Mr C being provided with a return on the investments he hadn't received his capital back from – and he was told he could request the capital back as it was available for him to withdraw from his payment part of C2L account.

I issued a provisional decision in July 2024. In summary I was satisfied the crux of Mr C's complaint can be split into two parts:

- Concerns about the returns he received on the SPVs where his capital has been repaid.
- Concerns about the SPVs he invested in where he hasn't had his capital returned, and it appears the properties weren't purchased.

On the first issue, I didn't find Mr C had been mis-led about the returns he could expect to receive on the properties that were purchased, and I wasn't persuaded he had received less than he was due for these five investments.

On the second issue, I found the offer made to Mr C to pay a return in respect of these investments (and explained how he could request to withdraw his capital from the payment provider) was fair and reasonable.

But I found C2L's handling of this situation had a practical and emotional impact on Mr C. I said Prosper Capital needed to pay compensation for the distress and inconvenience Mr C had suffered. I proposed an amount of £500 as reasonable in the circumstances for the impact suffered.

Mr C responded and provided further submissions for me to consider relating to the calculation of the annual growth rates. He also said the capital is not available for him to withdraw, despite the assurances by Prosper Capital that it was in his account.

Prosper Capital responded and provided new information and evidence. In summary it said:

- It believes Mr C has been caught up in fraud carried out by its AR, C2L, and due to this, it is no longer prepared to honour the principle of the settlement offer.
- It is responsible for C2L's conduct of regulated activities under the AR agreement, not for its conduct of unregulated activities. Its regulated activities were limited to arranging for investors to buy shares in SPVs. It is not responsible for the ongoing management of the properties held by the SPVs. This was delegated by C2L to an associated third-party company (TPC). It didn't have any post-investment regulatory obligations to monitor the value of the investments, as it offered an arranging-only service, where its regulatory obligations extended up to the point of sale of investments. Payment of returns from the SPVs relate to the ongoing operation and management of the SPVs and the underlying properties. This is not a regulated activity and falls outside the scope of the matters for which it is responsible.

I issued a second provisional decision in February 2025. This is what I said about our jurisdiction to consider the complaint:

"The first matter I will address is Prosper Capital's submission that it is only responsible for certain matters relating to regulated activities of C2L but not unregulated matters and not matters that relate to acts of the TPC.

These points relate to our jurisdiction to consider the complaint issues and so I think it's appropriate to set out the position in this respect.

We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm in the carrying on of one or more listed activities.

Rule 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".

And the guidance at DISP 2.3.3G says:

"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)".

To carry out regulated activities a business needs to be an authorised person (section 19 Financial Services & Markets Act (FSMA). We can deal with certain complaints against Prosper Capital, as it is an authorised person. That may include complaints about the acts or omissions of its appointed representatives, such as C2L. That is why this complaint is against Prosper Capital, rather than C2L.

Section 39 of FSMA says:

“(3) 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, to decide whether we have jurisdiction to consider this complaint against Prosper Capital, there are three issues I need to consider:

- What are the specific acts Mr C has complained about?
- Are those acts regulated activities or ancillary to regulated activities?
- Did Prosper Capital accept responsibility for those acts?

What are the acts about which Mr C has complained?

In summary, Mr C has complained Prosper Capital is responsible for him not receiving the correct returns from the shares he held in SPVs, which were used to purchase properties, both in terms of the rent received and sale proceeds returned to him. He has also complained that some of the investments that were arranged for him by C2L don't appear to have been invested as per the arrangements he agreed to, and he has failed to receive his monies returned.

I take the view, the lack of expected returns is intrinsically linked to Mr C's understanding of the investment, this includes the information C2L gave him about it before he invested. So, I find the complaint is in reality as much about the sale and arrangement as the subsequent operation of the SPVs. I'm satisfied that Mr C has expressed dissatisfaction about C2L's involvement in the sale of his investments. We have an inquisitorial remit and can look at wider issues. In this case I think Mr C's complaint encompasses all of C2L's acts in connection with the arrangements it made for him to purchase shares in the SPVs.

But I also note part of Mr C's complaint is about acts that occurred after the arrangement of his investments. These are in relation to actions after the shares in the SPVs were issued, so post investment activities.

Are these acts regulated activities or ancillary to regulated activities?

I'm satisfied when arranging Mr C's purchase of shares – C2L were carrying out the following activity:

Making arrangements for another person to buy or sell or subscribe for a security or relevant investment (article 25 of the Regulated Activities Order 2001) (RAO).

I understand Mr C responded to the promotions set out on C2L's website to invest in the SPVs. Prosper Capital has confirmed C2L operated a website which allows investors to invest in shares in limited companies set up as SPVs to acquire a specific property as a buy to let investment. Investors could choose which specific properties they wish to invest in through the property information documents C2L provided. C2L doesn't hold the properties, rather its role was to set up the SPVs which would do this.

In conclusion on this point, I find the activities described here constitute arranging for Mr C to invest and therefore the carrying out of the regulated activity set out above. I also find where C2L was responsible for the content of the financial promotions for each SPV, those promotions were in my view made in the course of those arrangements and is therefore, if not part and parcel of the arrangement then at least ancillary to it.

Did Prosper Capital accept responsibility for those acts?

For us to be able to look at the merits (the rights and wrongs) of the complaint we must be satisfied that the activities carried on by C2L were ones for which Prosper Capital accepted responsibility. To determine this, I've looked at the AR agreement between the two parties.

The agreement set out the regulated activities C2L could carry out as part of the agreement. This included arranging deals in investments (article 25 RAO), where the arrangements are for or with a view to transactions relating to securities or contractually based investments. It also included the activity of advising on investments (article 53 RAO). And the activity of agreeing to carry on activities (article 64 RAO), so far as relevant to the above two activities - arranging and advising.

So, I'm satisfied that, under the AR agreement, Prosper Capital did authorise C2L to arrange for Mr C to purchase the shares in the SPVs and to promote the investment. That is business for which Prosper Capital accepted responsibility under section 39 FSMA. And so, we have jurisdiction to consider whether Prosper Capital met its regulatory obligations when C2L, acting on its behalf, carried out the arrangements that the complaint is about.

Prosper Capital says it is not responsible for the actual amounts Mr C received in return for his investments. It has cited the details of the AR agreement to support its position. It says the regulated activities were limited to arranging for investors to buy shares in SPVs. But the payment of returns from the SPVs relates to the ongoing operation and management of the SPVs and the underlying properties. It says this is not a regulated activity and falls outside the scope of the matters for which it is responsible.

As I've set out, the AR agreement is specific to the regulated activities that C2L is granted permission to carry on. I accept that under the AR agreement C2L had permission to arrange Mr C's investments. But this activity doesn't cover the payment of returns at maturity or processing of rental payments – which is effectively the post investment acts Mr C has raised concerns about. I also agree that Prosper Capital isn't responsible for the acts of the TPC. That is a business with which Prosper Capital had no regulatory relationship at all. This limits the scope of the complaint Prosper Capital is responsible for.

While Prosper Capital hasn't accepted responsibility for everything Mr C has complained about, I'm satisfied the element of the complaint I can consider relates to how the investments were sold to him. This includes whether he was given sufficient information to understand how the arrangement would work before he agreed to invest, as this forms part of the obligations it had to meet Mr C's information needs. I can also consider whether C2L followed its regulatory obligations to ensure it acted in Mr C's best interest and conducted itself with skill care and diligence when arranging the investments. If it failed in its obligations, I can hold Prosper Capital responsible for that and make an award for any losses that I think Mr C has suffered as a result."

This is what I said about the merits of the complaint:

"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.”

The rules set out in the Conduct of Business Sourcebook (COBS), are also relevant obligations here, particularly:

- 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.”

For ease, I will deal with the complaint under the two headings I’ve already established.

Returns received on the SPVs where capital has been repaid

Mr C has had his capital repaid from five of the SPVs he purchased shares in, and he received rent for period under which the purchased properties were owned by the SPV. But he doesn’t believe he has received the correct growth on his capital, so doesn’t accept that he has received accurate returns.

I’ve reviewed the pitch information provided to Mr C before he invested. I’m satisfied this is clear that the expected returns were targeted figures. I’ve seen nothing to suggest any guarantees were given. I haven’t seen that the information given to him before he invested supports that he was misled about the returns that could be achieved. And in any case as I’ve already explained the returns weren’t guaranteed.

As mentioned, whilst Mr C has raised concerns about the calculation of the returns he’s received via C2L, I’ve not found this is something Prosper Capital is responsible for, under the terms of the AR agreement. But this doesn’t mean I can’t consider how the investment was sold to Mr C, and whether he was given sufficient information to understand how the arrangement would work before he agreed to invest. I can also consider whether C2L followed its regulatory obligations set out above to ensure it acted in Mr C’s best interest and conducted itself with skill care and diligence when arranging the investments.

But even, if I were to accept that C2L misled and/or didn’t act in his best interest, when it arranged these investments, I don’t find that it needs to do anything further. I say this because, if I were to uphold this part of the complaint, I take the view that the appropriate remedy would be to put Mr C back in the place he would be if he hadn’t made the investments. Mr C has had his original capital back, and he has received a return on this as well as rental payments. If he didn’t take this opportunity through C2L, I consider it likely he would have sought to invest in other similar investments.

It’s not possible to accurately say what else he would have invested in, and I’m conscious this is a type of investment where returns aren’t guaranteed, and capital losses were possible. So overall, I’m not satisfied Mr C has suffered a loss in this respect, despite any potential failings in the arrangement of the investments. It follows, I don’t require Prosper Capital do anything further in this respect.

Investments where Mr C hasn’t had his capital returned

There is a discrepancy in the information provided by the parties about these investments. From the information I’ve seen there are either five or six SPV’s Mr C invested in but hasn’t received his capital returned. From the records that have been provided to me, I’ve

established that this is a total capital investment of £12,000. So, for the purpose of this decision I consider this capital amount as his potential loss, regardless of the number of different SPVs.

Despite initial reassurances given by Prosper Capital that Mr C simply needed to request his capital and it would be returned to him, this has proven to be incorrect. It is now accepted that C2L has failed to be open about the true situation. It is also unclear what went wrong – by that I mean whether Mr C's funds were used to purchase shares in SPVs that never went on to acquire properties, his funds were misappropriated by C2L, or something else.

Prosper Capital say C2L and the TPC (who managed and collected rents) for the property investments were connected parties as they shared the same director. Prosper Capital has raised concerns about the TPC's involvement in the investment proposition. This includes details from a supervisory notice issued by the regulator about the TPC being responsible for mishandling investors monies, and co-mingling of funds between itself and C2L. Prosper Capital has expressed a view that the evidence points towards Mr C's funds having been invested and then mis-applied by the TPC.

Before making the property information documents available to investors, C2L needed to satisfy itself that the information contained within them was fair, clear and not misleading. And it also needed to be satisfied that by making the promotion and allowing Mr C to invest in the SPVs, it would continue to be acting in his best interests.

As set out above (in COBS 4.2.1R, and under PRIN 7), C2L had regulatory obligations to meet Mr C's information needs. In order to satisfy itself of the fair, clear and not misleading nature of the claims or assertions made in the property information documents, C2L 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 made.

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."

Whilst I appreciate, some of the investments Mr C made were prior to the publication of the consultation paper and the quote above relates to loan-based crowdfunding, I still feel it is relevant as it provides clarity as to the interpretation and application of the existing rules and guidance which were applicable at the time.

I find C2L should have carried out due diligence on the SPVs before promoting them and arranging investments in them. Specifically, enough due diligence to satisfy itself on the

essential information on which the promotions were based. This is a reasonable interpretation of its responsibilities under the FCA principles and COBS rules that I have set out above to ensure it was acting in Mr C's best interests when arranging his investments - as well as generally carrying on its business with due skill, care and diligence.

Due to the director link between C2L and the TPC and nature of the connected businesses, I'm satisfied C2L would have had awareness of the situation relating to the completion of property purchases for the SPVs and the arrangement for renting and collecting payments. So it follows I'm persuaded C2L would have known about the issues the regulator has reported on regarding the actions of the TPC, specifically in relation to how investor funds were being used.

Whilst I accept the specific details the regulator uncovered may not have become apparent until later, I'm satisfied at least some of them would have been at the time of investment due to C2L's close links with the TPC. This is relevant when considering whether C2L carried out the kind of due diligence I'd expect it to have and fairly promoted and arranged the investments.

As referenced above, C2L had an obligation to act in the best interest of its clients. So, it shouldn't have arranged investments for Mr C if there was an uncertainty about how the funds would be appropriated, or doubts around how client funds would be used. This is of particular importance when considering the investments Mr C made, for which he hasn't had his capital returned, and no clarity has been given as to how his funds were invested.

My finding is that C2L failed to meet its obligations to act in his best interest when arranging these investments for Mr C. I'm satisfied that, had C2L done everything it should have, it wouldn't have offered these investment opportunities to Mr C or arranged them for him, and he wouldn't have made the investments that were inappropriate for him. As such, Prosper Capital needs to put things right for him.

I note Prosper Capital has suggested Mr C may have subsequently agreed for some of the funds associated with these SPVs to be invested into unregulated loan notes issued by C2L. It has mentioned a record it holds suggesting a £5,000 reinvestment, but it has accepted it can't rely on the information it has received from C2L as it is insufficient to draw reliable conclusions. Mr C has told this service he didn't agree to any loan note investments. From the information provided, I haven't seen evidence to persuade me that Mr C did agree to any such reinvestment. So, I haven't considered this point further.

I also acknowledge Prosper Capital doesn't think a finding can be reached without further investigation of the circumstances of the arrangements through the insolvency process being undertaken for C2L. But I don't agree this is necessary, as I'm satisfied the evidence available indicates there has been failings by C2L when arranging these investments, which Prosper Capital is responsible for.

I understand Mr C did receive payments from these investments, despite the lack of clarity on whether his funds were actually used by the SPVs to purchase properties. I will take this into account later in my decision when I set out what Prosper Capital needs to do to put this right.

Impact of failings on Mr C

Mr C says he's suffered distress and inconvenience as a result of his attempts to resolve the situation and requested compensation for this. He has explained the actions of C2L has necessitated extensive personal investigations and had a profound impact on his mental and physical well-being.

I acknowledge the points Mr C makes. The information he has been given by C2L and Prosper Capital about the situation in respect of what's happened with his investment has been unclear and the goal posts seem to have moved on multiple occasions. This has contributed to the worry and frustration Mr C has suffered. He is left in the situation where he has little faith in what he is being told, and despite extensive efforts from himself he is no closer to knowing what has happened to the funds he invested.

So, I do find Prosper Capital's (alongside C2L's) handling of this situation has had a practical and emotional impact on Mr C. It is fair and reasonable to make an award of compensation for the distress and inconvenience he has suffered. Initially I proposed an amount of £500 as reasonable in the circumstances. But since my first provisional decision, Mr C has suffered further upset and inconvenience. Prosper Capital led Mr C to believe he would be able to release his uninvested funds himself by making a request through his online account. But after he made attempts and chasing things up, it has now admitted this is incorrect. It has transpired that there is nothing available in his account for withdrawal, and potentially he has been caught up in a wider fraud. This continued emotional and practical impact on Mr C leads me to a conclusion that an increase in the amount of compensation is warranted. I will set this out in the section below.

Lastly, Mr C has also raised a point about him incurring costs as a result of not having access to his funds. He has provided details of an offshore bank account he holds that incurs a fee if the balance held within it is below a specified threshold. I don't consider this fee to be a direct consequential loss of the failings I've identified that Prosper Capital are responsible for. From what I've seen, Mr C's balance was significantly below the required level needed to avoid the underfunding fee for the account. I also don't think the link between this charge can fairly be attributed as a consequence to the circumstances of this complaint. So, for those reasons, I don't find Prosper Capital is required to do anything in this respect."

Prosper Capital responded to my provisional decision. In summary it said:

- It thinks it's unlikely C2L had the state of mind (intention or knowledge) of the failings identified in the provisional decision. The timing of attributing a state of knowledge to C2L was at the point of arranging the investment, rather than at the point when financial irregularity occurred. If C2L discharged its role properly up to the point of investment and then went rogue later, then Prosper Capital's processes would have been working in respect of the due diligence and clear communications Prosper Capital's responsibilities for C2L are limited to the arranging activities, not any subsequent activities conducted by the TPC or the SPVs.
- There is no analysis as to when C2L would have grounds to suspect the funds would be misappropriated or mis-used in respect of the investments Mr C made. Responsibility for applying and distributing the monies rested with the SPV directors, who delegated the distribution function to the TPC. The doubt arose when the SPVs/TPC decided to depart from the established financial model and knowingly defrauded investors.
- Its understanding is The W Close property did use the funds raised to invest in the property in September 2018, and is still held by the SPV but the rent stopped being paid in July 2024. For the P Avenue property, the funds were used to purchase this in March 2020, and it was sold in January 2024. So C2L promoted these investments with a clear protocol for investing prior to the intention to deviate away six and four years subsequent to the arranging. In respect of Ch Road and Cr Road, and Y Place SPVs, it appears most likely Mr C's money was in fact applied to acquire loan notes.
- Even if C2L was aware of an intention by the SPV / TPC to defraud investors at the

point of arranging, and Mr C lost money on shares in the SPVs rather than loan notes, there is a question on whether Prosper Capital should have strict liability. Where an agent knowingly breaches protocols, his principal's responsibility for his actions is normally determined by reference to what he could have reasonably been expected to do to prevent the breach. The process for using funds to invest into property and pay rent was clear. If C2L's director had an intention to defraud, this would not have been reasonably discoverable by Prosper Capital.

- In order to maintain the conclusion, set out in the provisional decision, it is necessary to establish for each investment C2L had an intention to deviate from the investment model at the point of arranging. This is only possible where the intention to deviate was reasonably discoverable by Prosper Capital, as principal firms have strict liability for the regulatory actions of their appointed representatives.
- It does not believe it is possible to determine actual loss in respect of each investment. In respect of W Close, it understands the property is still held by the SPV, it is tenanted and in good condition. So Mr C may receive his capital back. Determining he should get his capital back as compensation seems unlikely to be appropriate once the position is unwound. In respect of Ch Road, Cr Road and Y Place it thinks it is possible Mr C agreed to re-invest the money earmarked for these shares into C2L's loan notes. If this is what happened, then the SPV issuing shares would have returned his capital without misappropriation.
- It disagrees that there is no need to consider the issue of whether Mr C agreed to divert his funds to loan notes. It says it would be incorrect to say it cannot rely on the information contained in the payment providers' statements it has seen, which indicates Mr C invested in loan notes.
- It had some observations and corrections of facts to make. It said it is not correct to say Prosper Capital agreed to pay Mr C to settle his claim. It just passed on the instructions it received from C2L on the technical steps needed for Mr C to access cash in his wallet. It wasn't proposing to pay any money to Mr C. C2L didn't delegate property management to the TPC. The directors of the SPVs were responsible for managing the properties and it was the SPVs that appointed the TPC as its delegate, not C2L. This underlines the fact the passing on of rents was not an activity for which Prosper Capital was responsible for under the AR agreement.

Mr C responded too. He accepted the conclusions but also provided some further comments. In summary he said:

- On the calculation of his returns on the initial investments, he doesn't think the growth rates given have been applied correctly in the final repayment calculation, leading to a lower amount than he should have received.
- The second provisional decision removes the return on capital that was previously acknowledged as being due to him as part of the offer made to him. He doesn't understand why this change was made. The only material difference since is there is now stronger evidence that C2L was operating fraudulently.
- His decision to invest in C2L was based on two fundamental factors, investment in real estate is historically solid and C2L was FCA regulated, giving confidence of regulatory oversight. Given the serious failings identified in how these investments were arranged and managed, he remains convinced that had Prosper Capital fulfilled its regulatory obligations as the principal firm, this situation could have been avoided altogether. If he hadn't invested in C2L, he would have sought another real estate

investment in the UK, due to the historical resilience of this asset class and its relatively low risk and strong returns.

- One of the ongoing financial difficulties he has faced is the bank fees incurred on his offshore account, which resulted from an inability to withdraw funds. C2L and Prosper Capital continuously misrepresented the ability to withdraw funds. The balance owed to him was just about enough to meet the required threshold on his bank account, and the fees incurred were a direct result of the delays beyond his control.
- He confirmed he agrees to transfer ownership of the shares he holds in the five remaining SPVs, totaling £12,000, as per the proposed resolution.
- The transaction into loan notes, which Prosper Capital refers to was made by way of a bank transfer he personally made (and provided a bank statement to support £5,000 being transferred on 9 March 2020). It was not executed by clicking the “reinvest” button on return funds from the SPVs.

As a result of the responses to the February 2025 provisional decision, further investigation has been carried out by this service. In summary the outcome of this is:

- Mr C did make a number of investments into loan notes that were issued by C2L during the period February 2018 to March 2020. He says he is not complaining about these investments, and he has had all of his funds returned from them. He says his last loan note investment was in early 2020, with the final repayment received in early 2021. He provided a copy of his C2L dashboard statement to show these transactions.
- Prosper Capital received further data from the liquidator (who is investigating C2L’s insolvency) from the payment system used by C2L. Initially it felt that this data supported that Mr C had had his funds earmarked for purchasing shares in SPVs returned and reinvested in loan note investments issued by C2L. But after further analysis and comment from this service, it agrees that the data available doesn’t provide conclusive evidence of the funds being returned and reinvested into loan notes. But Prosper Capital believes further investigation is required to review investor bank statements against the accounts used by C2L and the TPC in connection with their payments to investors. It thinks this will be able to precisely identify the investments in respect of which losses have occurred and understand the reasons for such losses.

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’ve considered the responses I received to my provisional decision, alongside all of the other submissions made and the evidence obtained from the further investigation completed. Both parties have made detailed submissions to support their arguments. I want to provide reassurance that I have considered everything that has sent. And while I won’t be addressing all of the points made in detail, I’m satisfied that my findings below address the substance of the arguments that have been put forward.

Having considered everything, I haven’t found reason to change the outcome I set out in my provisional conclusions. I’ll explain why.

Jurisdiction

Firstly, I will deal with the points raised by Prosper Capital regarding our ability to consider the issues raised. Prosper Capital has also questioned its liability for C2L's actions. It says, where an agent knowingly breaches protocols, his principal's responsibility for his actions is normally determined by reference to what he could have reasonably been expected to do to prevent the breach.

As explained previously, the AR agreement between Prosper Capital and C2L sets out the terms of the relationship. But for clarity, I will repeat the position. The agreement set out the regulated activities C2L could carry out as part of the agreement. This included arranging deals in investments (article 25 RAO), where the arrangements are for or with a view to transactions relating to securities or contractually based investments. It also included the activity of advising on investments (article 53 RAO). And the activity of agreeing to carry on activities (article 64 RAO), so far as relevant to the above two activities - arranging and advising.

Prosper Capital's comments indicate it is seeking to rely on common law agency to explain where its responsibilities lie. But it entered into an AR agreement with C2L – which authorised C2L to arrange for Mr C to purchase the shares in the SPVs. That is business for which Prosper Capital accepted responsibility under section 39 FSMA, creating a statutory liability. And so, we have jurisdiction to consider whether Prosper Capital met its regulatory obligations when C2L, acting on its behalf, carried out the arrangements for Mr C to invest. I'm not aware of anything in section 39 that says that a principal's liability is limited to breaches it could have prevented.

While Prosper Capital has questioned its liability, I'm satisfied it was responsible for C2L's actions when arranging these investments and not restricted in the way it describes. So, where there was a failing in how C2L did this, then this is something I can consider in this complaint.

Secondly, I note Mr C has again raised a point about the calculation of the returns he received on some of his investments. He maintains there is discrepancies in the data provided to show the return based on yield. This point relates to activities that occurred after he invested and stems from how his investments have been managed. Due to the circumstances of the arrangement and the multiple parties involved, it isn't clear if the management of the investment involves a regulated activity covered by our jurisdiction. But what I'm satisfied is sufficiently clear, is that Prosper Capital didn't provide authorisation for C2L to carry out activities relating to the management of investments through the AR agreement. This means Prosper Capital isn't responsible for C2L's actions in this respect.

So, my finding is the complaint point Mr C raises here isn't something Prosper Capital is responsible for, under the terms of the AR agreement. So, I haven't considered this further in reaching my decision on this complaint.

Merits

I will now go on to consider the merits of the complaint in relation to the issues relevant to the investments that haven't been repaid.

C2L's awareness of irregularities at the time of arranging

I acknowledge the points made by Prosper Capital about C2L's awareness that the proposed investment model would not be followed at the time of arranging Mr C's investments. It questions when C2L would have grounds to suspect the funds would be

misappropriated. And it says the responsibility for applying and distributing the monies rested with the SPV directors, who delegated the distribution function to the TPC. So, the doubt arose when the SPVs and/or the TPC decided to depart from the established financial model and knowingly defrauded investors.

I've considered the points made here about the role of the SPV directors and the TPC in the issues with the investments. As Prosper Capital points out, the relevant consideration here relates to C2L's role as its AR in arranging the investments for Mr C. When making these arrangements C2L had a responsibility to ensure:

- A firm must pay due regard to the interests of its customers and treat them fairly
- A firm must conduct its business with due skill, care and diligence

At the time Mr C's investments were being arranged, C2L should have been satisfied that that the opportunity he was investing in was viable. This would have required it to undertake due diligence to satisfy itself it would be acting in Mr C's best interests to allow him to complete the investments.

I also acknowledge the fact the director of C2L, was also the director of the SPVs and the TPC – essentially this was the same individual holding multiple roles and integral to the operation of the investment opportunity. In my view, this does support a finding that the irregularity occurred when arranging as C2L would have been aware that the transaction to purchase a property wasn't fully viable and it was not definite that Mr C's funds would continue to be used for the purpose intended and in the way he was led to believe they would be as part of the arrangements .

As mentioned above, C2L's director was also the sole director of the SPVs and the TPC – so in my view C2L would have had awareness of the viability of the opportunities it was arranging. Where C2L arranged for Mr C to commit funds, if there was any doubt that the funds would not be applied and continue to be applied as intended to purchase and hold properties under an SPV, it should have acted to prevent the risk of Mr C incurring a loss because of this. I'm not saying C2L was aware (at the time of arranging) of the precise irregularities that would occur – but rather it should have through its due diligence recognised that the prospect of issues occurring meant that it wouldn't be acting in Mr C's best interests by allowing him to commit funds.

Even if due diligence wouldn't have revealed the precise irregularities with the investment scheme, I'm of the view C2L likely knowingly knew that it was making arrangements for Mr C in investments that were of poor quality and/or had awareness that the money being taken had a risk of being misappropriated. Allowing the arrangement to proceed in this situation, would be a failing to meet its obligations to Mr C - particularly by not acting in his best interests.

I maintain the finding set out in my provisional decision that C2L shouldn't have arranged investments for Mr C if there was an uncertainty about how the funds would be appropriated or doubts around how client funds would be used. I find Prosper Capital is responsible for this as it happened in the course of arranging by C2L, which it was authorised to do under the AR agreement.

Properties purchased

Prosper Capital says one of the remaining SPVs actually purchased the intended property (W Close) and still holds it. It said this information came from the liquidator, although it didn't provide this evidence.

While I accept it is possible this property was purchased, it is still uncertain whether the arrangements Mr C agreed to were carried out and also unclear whether anything will be returned to him from this SPV. I find it appropriate to resolve the complaint now and allow for Mr C to be compensated. So, my finding remains that I don't think he would have invested at all, but for C2L's failings in how it arranged his investments. As Mr C has agreed to transfer his shares in the SPVs to Prosper Capital, if there are any funds released from this SPV by the liquidator, then the proceeds will be paid back to Prosper Capital to offset the compensation paid out.

It has also mentioned another property was bought by the SPV in March 2020 (P Avenue) and sold in 2024. From the records I've seen, Mr C's intended investment into the SPV purchasing this property was made in July 2019, suggesting there is a time gap of eight months between his investment and the property purchase. I also haven't seen evidence that he had his capital returned if this property was sold in 2024 anyway. Again, if Prosper Capital takes ownership of Mr C's shares in this SPV, it will receive any proceeds if there is a genuine return due on the shares.

Mr C agreeing to invest in loan notes

Prosper Capital has questioned whether Mr C agreed to divert some of the funds he initially intended to invest in the SPVs into loan notes. And says if this is what happened, then the SPV issuing shares would have returned his capital without misappropriation. It has also noted Mr C made reference to claiming an entitlement of a 12% return, which is the same rate of interest paid on C2L's loan notes. So, it questions why he was claiming this rate of return unless he had separate correspondence with C2L offering him such a return.

Mr C previously suggested he didn't have any loan note investments. But has now explained he did invest a number of property development loan notes with C2L. He has provided a copy of his C2L dashboard that show he actually invested on several occasions in loan notes over a two-year period. This information indicates that all of the loan note investments he made were repaid as expected by early 2021. Mr C has also been clear he isn't complaining about any of these investments.

While Mr C has now provided different information about investing in loan notes, I don't think the balance of evidence supports that he agreed to use returned capital from his SPV investments to purchase loan notes. Further information has been gathered relating to the Mr C's investments with C2L – this includes his C2L dashboard showing the transactions carried out for both the SPV shares and the loan notes. The payment system provider has also provided data. Since receiving this data and discussing further with this service, Prosper Capital has accepted that the assumptions about specific transactions being related to reinvestment were not supported by the evidence. So I'm satisfied that there isn't sufficient evidence to support a finding that Mr C used returned capital from the SPVs, to invest in loan notes.

Request for further investigation

Prosper Capital still thinks further investigation is needed. It says it is reasonable to request for complainants to evidence their loss by providing further information. It is seeking to carry out further analysis of Mr C's bank statements and cross reference these with statements from C2L and the TPC.

While I can understand why this will be helpful for it to reconcile all of the issues it has now discovered in respect of the actions of its AR, C2L, I don't think this is required to reach a finding on Mr C's complaint. I'm satisfied Mr C has provided evidence to show his loss – he has provided evidence of the SPVs he invested in – and the available evidence provided by

him and Prosper Capital hasn't shown that this capital was returned to him. We are an informal resolution service, and it wouldn't be reasonable to delay resolution of the complaint any further given the evidence I've seen, which was obtained through a thorough investigation and gave both parties ample opportunity to make representations.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr C as close to the position he would probably now be in if he hadn't invested in the SPVs through C2L.

For the SPV investments Mr C made where he had his capital returned in June 2023, I don't think Prosper Capital needs to do anything further for the reasons I've already given above and in my provisional decision.

For the SPVs, where he hasn't had his capital back, I think Mr C would have invested differently. It's not possible to say precisely what he would have done, but I'm satisfied that what I have set out below is fair in the circumstances of this complaint. I think Prosper Capital does need to do something to put things right. As I've said before, I'm satisfied Mr C wouldn't have gone ahead with these investments, so he should have his capital returned.

I've considered whether Mr C ought to receive a return or interest on this money, but in the specific circumstances of this complaint I don't award any additional return. I say this because I'm satisfied that Mr C would likely have looked for other investment opportunities to invest at the time. He has now admitted he invested in loan notes issued for development projects promoted by C2L. So it does appear he was interested in this kind of risk-based investment. And given the generally higher risk nature of these investments, I consider there was an equal chance that Mr C may have lost some or all of his investment anyway. I acknowledge that he might also have made a return. But without the benefit of hindsight, it simply isn't possible for me to fairly establish what return Mr C would likely have made. I'm also conscious, Mr C has already received some returns from the money he committed in the form of dividends. It appears he received these returns for the majority of time since he made his investments, despite the uncertainty of what actually happened with the funds he committed to the SPVs. So overall, I don't think in this case it would be fair to pay him anything further.

I've considered Mr C's request that he is paid interest on top of his capital being returned. But I'm not persuaded it would be fair and reasonable to award this in all the particular circumstances of this case. I say this for the same reasons I've set out above relating to the higher risk nature of the products he was investing in, and the likelihood that there could be full capital losses, meaning there was an equal chance he may have lost some or all of his investment had he invested in another opportunity other than the SPVs he invested in. My finding isn't that Prosper Capital is responsible for wrongly withholding funds, but rather Mr C would not have invested but for failings by C2L when arranging his investments.

I've also considered the further submission Mr C has made about the consequential loss he claims as a result of not being able to maintain a balance in his offshore account as a result of his inability to withdraw funds. While I accept, he was provided with misleading information about his ability to withdraw funds, I don't agree the fees he incurred on his bank account are linked. I don't find the evidence supports that the only reason he incurred fees was due to failings by Prosper Capital. The outcome of his complaint was still ongoing at this time, so it was unclear what it was responsible for paying him, or that he could have avoided account fees in any case. So, I'm not persuaded, Prosper Capital needs to do anything here.

To put things right:

- I direct Prosper Capital to refund the original capital Mr C invested in the remaining SPVs – which I understand was £12,000.
- I also require Prosper Capital to pay Mr C £750 for the distress and inconvenience caused by its handling of the situation.

Mr C has agreed for Prosper Capital to take ownership of the shares he holds in the remaining SPVs. This should be arranged, so that it receives any proceeds the liquidator may distribute in relation to these assets as part of C2L's insolvency.

Alternatively, if this isn't possible Prosper Capital may request an undertaking from Mr C to request that he repays any amount he may receive from the investments in future.

My final decision

I uphold the complaint. My final decision is that Prosper Capital LLP should pay the amount set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 October 2025.

Daniel Little
Ombudsman