

The complaint

Miss E complains that Funding Circle Ltd failed to take effective recovery action on several defaulted loans she had invested in through its crowdfunding platform. She's also unhappy with the level of updates Funding Circle provided during the recovery action.

What happened

Miss E holds a crowdfunding account on Funding Circle's peer to peer ("P2P") lending platform. She originally self-selected her loans on the account, but it later changed to an automated account where loan parts were bought and sold on her behalf based on set criteria.

Miss E raised a number of concerns with Funding Circle regarding six loans she was invested into. I'll refer to these as Loans A to F and will set out the background for each of these individually below.

Loan A

Miss E invested £20 into Loan A with a company I shall refer to as Company A. The loan was taken out in March 2017. Unfortunately, the loan defaulted in October 2017 and Funding Circle had to take recovery action against Company A and the personal guarantor. Miss E's concerns regarding this loan was that Funding Circle failed to secure a Voluntary Charging Order ("VCO") against the personal guarantor's property.

Funding Circle said it contacted the personal guarantor to discuss repayment options and they initially agreed to sell their property in order to repay investors. Funding Circle said it didn't seek a VCO over the property as the sale was ongoing and it didn't want to frustrate the sale and cause any undue delay in repayment. Funding Circle said it appropriately pursued the personal guarantor but unfortunately, they later declared bankruptcy.

Miss E remained unhappy and so she referred her complaint to this service for an independent review. An investigator considered Miss E's complaint. He didn't think Funding Circle had acted unfairly by not obtaining a VCO on the personal guarantor's property as the property wasn't listed as security for the loan. Rather, the security was the personal guarantee which Funding Circle had pursued.

Miss E didn't accept the investigator's findings as she said it was Funding Circle who said it would secure the VCO in one of its loan comments updates, but it waited another five months before taking any legal action.

Loan B

Miss E invested £100 into Loan B with a company I shall refer to as Company B, which was defaulted in February 2019. Funding Circle agreed a reduced repayment plan with the personal guarantor for the loan. The personal guarantor agreed to pay 50% of the contractual monthly payments which would be reviewed every six months.

Miss E complained to Funding Circle as she felt there was publicly available information which suggested the personal guarantor could afford to pay more than was agreed. She said she'd seen that the personal guarantor was owed £57,000 by another company they owned which Funding Circle should have considered when reviewing the repayment plan.

Funding Circle said the intention of the repayment plan was to support Company B and the personal guarantor with the repayment of the total outstanding debt. Which, under affordable repayment terms, would allow for the debt to be repaid in full.

Miss E remained unhappy and so she referred her complaint to this service for an independent review. The investigator looked into Miss E's complaint about Loan B, but he didn't think Funding Circle had acted unfairly. He said he couldn't be certain what the outcome of any missed reviews would have been, but he recognised that the repayment plan was in place to repay the debt in full.

Miss E didn't accept the investigator's opinion. She said that Funding Circle refused to admit to her that it hadn't carried out reviews of the repayment plan as it said it would. She said Funding Circle could have saved her some trouble and upset here, as she said she invested a great deal of time in communicating with it to try and understand whether it had carried out the reviews as promised.

Loan C

Miss E invested £99 into Loan C with a company I shall refer to as Company C. The loan was automatically assigned to her in April 2018 as part of Funding Circle's automated lending tool. As such, she did not receive or review any promotional material for the loan before investing.

Miss E raised a complaint with Funding Circle as Company C voluntarily wound up quickly after the loan was assigned to her and the personal guarantor couldn't be found. Miss E said Company C had acted fraudulently and Funding Circle failed in its due diligence.

Funding Circle didn't uphold Miss E's complaint. It said that at the time of offering the loan it felt fully confident that Company C would be able to service the loan as contracted to. Funding Circle explained that whilst each loan is rigorously assessed prior to offer, there is always a risk that unforeseen events may occur that cannot be predicted at the assessment stage. It said it defaulted the loan in order to commence recovery action as quickly as possible and it was working hard to contact Company C who were currently unresponsive. Funding Circle also clarified that there were no findings of fraud with regards to the loan, however, should that change it said it would keep investors updated.

Miss E wasn't satisfied with Funding Circle's response and so she referred her complaint to this service for an independent review. An investigator looked into her complaint but didn't think Funding Circle had acted unfairly. He said he didn't think Funding Circle misled investors into thinking there was any more security than the personal guarantees and it was clear about the risks involved in lending on the platform.

Miss E didn't accept the investigator's findings. She queried whether this service had seen evidence of Funding Circle's investigation into whether Company C had acted fraudulently. She also said the promotional material was incorrect as it said there were no loans to Company C, but she'd seen a statement of affairs document on the Companies House website from May 2018 which showed it had around £236,000 owed to creditors. She was also unhappy that Funding Circle didn't report this to Action Fraud and said it wasn't acting in her best interests by not doing so.

The investigator considered Miss E's points, but they didn't change his opinion. He said that it's at Funding Circle's discretion whether to report the matter to Action Fraud or not, but he didn't think this had a tangible impact on her. He said the personal guarantor disappeared immediately so he couldn't say that there were any specific actions that Funding Circle could've taken to try and rectify the situation sooner.

Loan D

Miss E invested just under £19 into Loan D with a company I shall refer to as Company D, which was defaulted in July 2017. Funding Circle agreed a reduced repayment plan with the personal guarantors in September 2017. The agreement was that the personal guarantors would pay 55.35% of the contractual monthly repayment which would be subject to quarterly reviews.

Like in her complaint about Loan B, Miss E complained to Funding Circle as she felt it failed to carry out the reviews of the repayment plan and that there was publicly available information which suggested Company D could afford to pay more than was agreed. She said she'd seen Company D had considerably more assets in its accounts from 2017 onwards than when it obtained the loan. She said Company D's accounts to March 2020 show that it had loaned around £216,000 to another group company. She said Funding Circle should have considered this when reviewing the repayment plan.

Funding Circle didn't uphold the complaint. Funding Circle said that it outlines in its terms and conditions and additional literature that in the event of defaults, it would seek the debt accordingly and on behalf of investors so this is something Miss E needed to be comfortable with.

Miss E remained unhappy and so she referred her complaint to this service for an independent review. The investigator looked into Miss E's complaint about Loan D but he didn't think Funding Circle had acted unfairly. He said Funding Circle made attempts to increase the level of monthly repayments in the plan, but it had no success. He added that taking legal action has the risk of not being cost-effective and so he didn't think Funding Circle had acted unreasonably.

Miss E didn't accept the investigator's opinion. She said that sending a request for a review doesn't amount to a proper financial review being conducted.

Loan E and Loan F

Miss E invested £40 into Loan E with a company I shall refer to as Company E and £100 into Loan F with a company I shall refer to as Company F. Both companies were voluntarily struck off and Miss E complained as she felt Funding Circle should've prevented this from happening.

Funding Circle didn't uphold Miss E's complaint about Loan E and Loan F. It said it's not always notified when a company is proposing to strike off. Sometimes this does not come to fruition and the proposal is suspended.

Miss E was unhappy with Funding Circle's response and said it ought to have kept up to date with any notifications around Company E and Company F in the Gazette or on the Companies House website. In response, Funding Circle said it's important to stress that the loan comments are a place for all investors to receive the same amount of information surrounding companies they are lending to and that it doesn't provide additional information to investors on an ad hoc basis to ensure all investors receive the same information. Miss E

said this response didn't answer her questions and so she referred her complaint to this service for an independent review.

An investigator looked into Miss E's complaint about Loan E and Loan F but didn't uphold them. In summary, he said he didn't think any action Funding Circle could have taken would have made any difference to the outcome in these cases. He said it was clear the loans were heading for a default in any case and so he couldn't see how preventing them from striking off would've improved her chances of recovery on the loans.

Miss E didn't accept the investigator's findings. She explained that a voluntary strike off should only happen if the company has no agreements with creditors which both companies did. She said the Companies House website makes it very clear that striking off should not be seen as a cheap alternative to insolvent liquidation and the procedure assumes the directors have followed the correct process which is to send all company creditors a notification form alerting them to the intention to strike off. Miss E said Funding Circle hadn't provided any evidence to show that it received this notification or whether it considered preventing the voluntary strike off of these companies. In relation to Company F, she added that it had assets worth around £390,000 at the time and Funding Circle's failure to act means she will never know what happened to the money from the sales of those assets.

Lack of updates

Miss E raised concerns regarding the lack of updates provided by Funding Circle on her loans.

Funding Circle explained that its time frame for updating loan comments is usually monthly, unless otherwise stated. It said that whilst it's not obliged by regulation to provide the level of information it does on defaulted loans, it aims to be as transparent as possible with investors and provide updates on defaulted loans as good practice. However, it said that there are unfortunately times where it is unable to provide updates as frequently as investors would like.

The investigator noted that Funding Circle acknowledged that it failed to provide frequent updates on the loans, and he said that the delays in Loan A were particularly long, with no update given for around 13 months. Funding Circle accepted this and agreed to pay Miss E £150 in recognition of the delays.

In response to this, Miss E said she would accept £150 but only in relation to the delays experienced on Loan A.

As Miss E didn't agree with the investigator's findings, 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've very carefully considered the detailed submissions that Miss E has provided. I can confirm that I've read and considered her submissions in their entirety. However, I hope Miss E 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.

Funding Circle's investor terms which Miss E agreed to when opening her account are

relevant in my consideration of all her loans. These explain that Funding Circle would ultimately make any decisions regarding recovery actions on loans:

“11.4. You appoint the Security Holder to act as agent to hold the Security in connection with any Loan. You are not entitled to, and will not seek to, take any action or commence any proceedings against any Borrower or Guarantor in your own name. Only the Security Holder is entitled to take any action or proceedings. You authorise the Security Holder to exercise the rights, powers, authorities and discretions specially given to the Security Holder under or in connection with any Security Document, together with all other incidental rights, powers, authorities and discretions.

[...]

13.6. We, the Security Agent or the Security Holder may take such steps as we consider necessary or desirable in our absolute discretion to collect the outstanding debt including, without limitation, pursuing Guarantors, enforcing Security, assigning the debt to a debt purchaser, and commencing formal legal action or insolvency processes through the courts.”

I've also taken into account the wider regulatory obligations on Funding Circle. Funding Circle is authorised and regulated by the Financial Conduct Authority (“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.”*

Funding Circle 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.”*

Loan A

I understand Miss E believes Funding Circle should have taken alternative action in terms of the recovery for Loan A. Specifically, that it ought to have secured a VCO against the personal guarantor's property. Whilst I can appreciate why Miss E thinks this would be beneficial; I don't think it was unfair or unreasonable for Funding Circle not to take this action. I say this as Funding Circle was under the impression that the sale process was ongoing, and it didn't want to take any action which would jeopardise this. I'm satisfied Funding Circle pro-actively pursued the personal guarantor and it requested their solicitor's undertaking on several occasions. As I've explained above, Funding Circle had a regulatory obligation to pay due regard to the interests of its customers and treat them fairly and this

included Company A (and its personal guarantor) as well as Miss E. I think Funding Circle was trying to treat both parties fairly by exploring the option of the personal guarantor selling their property to pay back investors.

Miss E has made the point regarding it being Funding Circle itself that said it would secure a VCO. I believe the update she has referred to is the 20 December 2017 update for Loan A which explained the following:

“Negotiations have begun regarding large repayment upon sale of property and a voluntary charge as security in the interim.”

Whilst I agree that this indicated that Funding Circle might look to secure a VCO, no guarantees were made. As explained above, Funding Circle had discretion as to what recovery action it took, and I’m satisfied its decision not to secure a VCO was fair and reasonable in the circumstances.

Loan B

Miss E’s complaint in respect to Loan B is similar to that of Loan A – Funding Circle should have taken the action it said it would. Funding Circle has provided copies of emails it sent to the personal guarantor in November and December 2020 requesting that they complete an income and expenditure form to enable it to review the repayment plan. I’ve also seen a copy of the personal guarantor’s response in which they explain that the agreement has been assigned to another company and a term payment agreed. I understand the debt was sold to a third party in June 2021 and that Funding Circle made Miss E aware of this through its updates. However, it’s not clear if this is the assignment which the personal guarantor is referring to in their email. Regardless, it’s clear that Funding Circle did make attempts to review the repayment plan as it said it would. And I can’t say with any certainty whether it would have made a difference to the level of monthly repayments if Funding Circle had conducted these reviews more frequently. I understand Miss E feels there was publicly available information which suggests the personal guarantor could afford to pay more but, as I’ve explained previously, Funding Circle had the discretion as to what recovery action it took, which includes accepting a repayment plan on a basis it feels is fair to both investors and the borrower/personal guarantor.

Loan C

I can understand Miss E’s concerns regarding this loan, considering how quickly payment issues began. However, I’ve not seen anything that suggests Funding Circle knew or to have known that there was anything inherently wrong with offering the loan to investors. Funding Circle has explained that the loan was subject to a full review in which a full holistic assessment of the various documents and credit reports obtained during the application was conducted.

Funding Circle has provided copies of these documents which included:

- Business credit reports
- Credit searches for the personal guarantor
- Company C bank statements
- Full company accounts for year-end 31 December 2016 and 31 December 2017

Funding Circle’s investor terms explained that it’s able to rely upon such documents provided to it:

“11.10. We, the Security Agent and the Security Holder may rely on any representation, notice or document believed by us or it to be genuine, correct and appropriately authorised and any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within their knowledge or power to verify.”

I understand Miss E has referred to there being existing debt which wasn't disclosed to Funding Circle and wasn't included in the promotional material for loan. I think it's important to first note that as Miss E didn't select the loan, the promotional material had no bearing on her decision to invest. I acknowledge that the statements of affairs document does list there being existing debt in the region of £235,000, so the question is whether Funding Circle ought to have known about this before allowing investors to lend to Company C. Having looked at the documents provided as part of Funding Circle's financial checks on Company C, I can confirm there is no mention of this outstanding debt. As such, I don't think Funding Circle could've known about this debt. There was no record of this debt filed on the Companies House website until the statement of affairs document was listed, but this was after the loan was approved on Funding Circle's platform. It's also not clear what all of the debt is in relation to and when it was incurred.

I understand Miss E says this is evidence of fraudulent activity by Company C and says Funding Circle should have reported this to the relevant authorities. It's not my role to determine if there has been any fraudulent activity, rather it's to determine whether Funding Circle has acted fairly and having done so I'm satisfied it has.

Funding Circle said the following in its loan comment update in May 2018:

"This loan has been downgraded as we have received notice that the borrower has taken steps to place the company into liquidation. We are conducting our internal investigations as to the early failure and are in the process of contact the guarantor to ascertain their position."

Funding Circle has explained that it found no breaches in the application process. Part of this process included obtaining identification documents verified by a solicitor and proof address for the personal guarantor, as well as confirming there were no CIFAS warnings on the credit report it obtained for them. It said it paid the loan into Company C's genuine bank account and the contact details provided appeared genuine. As such, I can't find any failings in Funding Circle's loan application process.

I empathise with Miss E as it's unfortunate that Funding Circle has been unable to successfully reach out to the personal guarantor for recovery of the money but I'm satisfied Funding Circle has made reasonable attempts to do so and has taken reasonable action against Company C and the personal guarantor.

Loan D

Funding Circle provided a loan update in June 2017 explaining that Company D was experiencing a severe cash flow situation and said it was in discussions about next steps. This was followed up with another update in July 2017 in which it explained that the decision had been made to default the loan in order to protect investors as Company D was unable to service the loan as per the agreement. The update also explained that liability of the personal guarantors would be crystallised and it would allow Funding Circle to commence legal proceedings against them should they become unresponsive. I understand that legal proceedings weren't pursued immediately as a repayment plan was agreed with the personal guarantors in September 2017.

Considering the detail provided in the updates, it's clear that the effect of the default was that the liability for the repayments of the loan transferred to the personal guarantors. Clearly, there are advantages to pursuing the personal guarantor rather than taking legal action against Company D, such as avoiding unnecessary legal costs. I don't think it was unfair or unreasonable for Funding Circle to take this action, especially considering Funding Circle had concerns around Company D's financial circumstances at that time. As such, it was unclear whether taking legal action against Company D would result in recuperating money for investors.

Furthermore, the repayment plan was agreed with the personal guarantors and not Company D. So whilst I appreciate Miss E has identified that Company D's assets had increased since the default, the relevant considerations are the affordability of the personal guarantors and not that of Company D. As the investigator explained, Funding Circle made numerous attempts to review the personal guarantors' circumstances and I don't think it would be fair to hold it responsible for the personal guarantors' unresponsiveness.

Funding Circle has explained that it considered the merits of commencing litigation against the personal guarantors when it failed to respond in order to enforce recovery of the debt, but it said it would require the termination of the current repayment plan. And this would result in a cessation of repayments to investors for a prolonged period whilst legal proceedings were in process. So I think Funding Circle's decision to allow the current repayment plan to continue whilst seeking to re-establish negotiations with the personal guarantors was fair and reasonable as it also avoided the need to incur legal costs.

Loan E and Loan F

I'd like to start by explaining that it's not within my powers to determine whether Company E and Company F should have been allowed to be struck off due to it having outstanding debt. Instead, my decision focuses on whether it was fair for Funding Circle not to have objected to the strike offs.

I understand that Miss E thinks Funding Circle should have done more to prevent Company E and Company F from being voluntarily struck off. Funding Circle has explained that it wouldn't normally receive notification of an application to strike off. I'm unable to confirm whether that's the definitely the case, but Funding Circle has explained that even if it had become aware, it would need to decide whether there was any benefit in objecting. I think it's fair for Funding Circle to consider this before taking any such action.

Looking at the timeline of events, I don't think Funding Circle's actions were unfair or unreasonable. I say this as Loan E had already defaulted in October 2017 when Company E had made an application to strike off in August 2018 and Funding Circle had already begun pursuing the personal guarantor for the outstanding repayments. Similarly, Loan F had already defaulted in December 2018 when Company F applied to be struck off in January 2019 and Funding Circle had already begun pursuing the personal guarantor for the outstanding repayments. With this in mind, I don't think it was unreasonable for Funding Circle not to object to the strike off and I agree with the investigator's findings that preventing the strike offs is unlikely to have improved Miss E's chances of recovery on the loans.

I've considered Miss E's comments regarding Company F's accounts which suggested it had considerable assets available. However, the accounts she's referred to were from December 2017, almost a year before Company F defaulted on the loan. As such, I don't think this is sufficient evidence to suggest Company F was in a position to repay the loan and I'm satisfied Funding Circle's decision to pursue the personal guarantor was fair and reasonable in the circumstances.

Lack of updates

Funding Circle has acknowledged that it didn't regularly update the loan comments on each of Miss E's loans. It's clear Miss E has had to proactively contact Funding Circle to understand what progress it had made with its recovery action on the loans. And so I appreciate this would have caused her some concern and worry about what was happening with her investments. However, I've also considered that Funding Circle had made her aware that the loans had defaulted and so she would've been aware that her investment may not be repaid in full. I'm also satisfied Miss E ought to have been aware of the high-risk nature of investing in crowdfunding as Funding Circle makes this risk clear throughout its promotion of its accounts and warns investors that their capital is at risk. So taking all this into account, I'm satisfied that Funding Circle's offer of £150 is a fair level of compensation for the inconvenience and worry caused by its lack of updates to Miss E across all six loans that I've considered.

Putting things right

I think Funding Circle should pay Miss E £150, if it hasn't already, in recognition of the distress and inconvenience caused to her as she had to chase Funding Circle for updates on the recovery action it was taking across the loans I've considered above.

My final decision

I uphold this complaint and direct Funding Circle Ltd to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 21 April 2022.

Ben Waites
Ombudsman