

The complaint

Miss E complains about the way Funding Circle Ltd provided updates on a loan she invested into through her crowdfunding account. She is also unhappy with the way the loan has been managed in recovery and Funding Circle Ltd's failure to answer her queries about actions taken to ensure her investment is returned.

What happened

Miss E holds a crowdfunding account on Funding Circle's peer to peer lending platform. It is an automated account where loan parts are bought and sold on behalf of Miss E based on a set criteria – including risk profile. Miss E's account had a balanced risk profile – meaning she could be allocated loans across the full range of risk categories (A+ to E rated loans).

The loan subject to the complaint was allocated into her account by Funding Circle. In May 2018, it became a bad debt, the loan went into default. Funding Circle started proceedings to recover funds – including seeking to obtain payments from the guarantor of the loan.

In October 2020, Funding Circle explained to Miss E that it had updated the loan comments and apologised for the updates not being given in a timely manner. It said investor updates will be provided only when there is a significant change to the status of a loan. But said behind the scenes it is working to pursue borrowers and guarantors to resolve late payments and defaulted loans to get money repaid to Miss E.

In February 2021 Miss E complained to Funding Circle about the way the it was managing the recovery of the loan, the lack of updates and responses to her queries about the loan.

In April 2021, Funding Circle responded to the complaint by providing answers to the queries Miss E raised about the actions it was taking with the borrower to ensure payments were made. It explained the reason for the decision not to pursue a security was because the guarantor continued to make payments. It apologised for any confusion caused by the loan updates it provided. Lastly it confirmed there was an agreed repayment plan in place for the loan.

Miss E didn't accept the response, so referred her to complaint to this service for an independent review.

One of our investigators looked into the complaint. He didn't uphold it - in summary he said:

- The terms and conditions of Miss E's account confirm that recovery actions are completely at the discretion of Funding Circle. But it did still need to act in line with the overarching principles of treating its customers fairly and acting in their best interests.
- He studied the loan comments which outline the recovery actions taken. He reached the conclusion that Funding Circle had acted reasonably in the recovery action it has taken.

Miss E didn't agree with the investigator's conclusions. She said:

- Her complaint is about the recovery action that Funding Circle said it would take (and

- was required to) - but did not.
- Funding Circle didn't tell investors about the recovery actions it was taking, in a timely manner or of its own accord. It would not discuss or clarify her concerns despite many times of asking.
 - She was led to understand that there was a requirement for agreed payments to be secured. She doesn't believe Funding Circle has been transparent about when it decided not to pursue the security – and because of this it didn't keep her informed despite the requests she made.

As Miss E didn't accept the investigator's opinion, the complaint has been passed to me to reach a final decision.

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.

The crux of Miss E's complaint is about the recovery actions Funding Circle took on a defaulted loan, and how it kept her informed and responded to her queries about those actions.

In reaching my decision, I've reviewed Funding Circle's investor terms and conditions. In summary these explain that Funding Circle would act in the interests of investors as a whole. It would have discretion to make decisions regarding recovery actions on loans – including whether to enforce security, seek new security and agree payment plans.

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."

And I've borne in mind that the FCA's consultation papers on loan-based ('peer-to-peer') and investment-based crowdfunding platforms.

When a loan goes into default (due to payment problems) Funding Circle terms indicate that it would undertake recovery action that it considers to be in the best interests of the affected investors to achieve a maximum recovery. This does mean that a variety of action could be taken depending on the circumstances – including pursuing guarantors, enforcing security, and commencing formal legal action. For this particular loan the updates it provided indicate that it made a variety attempts and the strategy changed as a result of ongoing engagement with the guarantor. I understand that payments are still being paid – albeit not at a level that has meant the loan has been fully repaid. So I don't think I can say Funding Circle have failed to act in Miss E's best interests when trying to recover owed funds.

I acknowledge that Funding Circle did need to keep Miss E updated on the status of the loan and the actions it was taking to recover investors funds after the loan was defaulted. I've reviewed the updates that were provided up to the date that Miss E complained. The frequency of the updates did vary and while some updates happened monthly or more frequently, there were some longer gaps. It appears the nature of recovery actions and negotiations with the guarantor meant that the position has changed between updates. I don't find this to be unusual as the payment situation can change overtime and this does mean updates can become outdated.

Miss E complains that Funding Circle didn't keep her properly informed and didn't answer all the inquiries she made. She has referred to an update in January 2020 where it was explained that the guarantor wants to begin making payments, but Funding Circle were seeking security and it said a further update on negotiations would be given. The next updates were two updates in October 2020. These updates happened just over a week apart - the first explaining that the guarantor was making regular payments and the second indicating a decision to commence legal proceedings because a payment plan couldn't be agreed. Then it wasn't until March 2021 until the next update where it was confirmed the guarantor continues to make monthly payments and a decision had been made not to pursue security whilst payments continue.

It appears from the updates and information Funding Circle has provided that decisions around the recovery actions did change. As mentioned above, I don't find this in itself unusual as depending on the circumstances, it can be reasonable to amend strategy. Funding Circle is entitled to make decisions on what is in the best interest of all investors. Pursuing legal action and requesting security are options to do this. The fact it decided to not follow these avenues because the guarantor continued to make payments was a decision it made as it believed this to be in investors best interests. And as mentioned above the guarantor continues to make payments. But I do acknowledge that investors like Miss E weren't party to the negotiations and discussions with the guarantor, so the updates don't provide the full picture. While I understand Miss E's frustration that Funding Circle changed from telling her it required security over payments to then not, I don't think this means it treated her unfairly. But I accept it didn't update her for several months about the change in position, I will cover this point later in my decision.

Funding Circle didn't provide the level of information Miss E wanted, but it says part of the reasons for this was because it was unable to share some information because it deemed it confidential. Funding Circle has provided additional information to this service about the actions it took but asked that it remains confidential. Our rules allow us to receive evidence in confidence. We may treat evidence from financial businesses as confidential for a number of reasons – for example, if it contains information about other customers/third parties, security information or commercially sensitive information. Some of the information Funding Circle has provided is information that we considered should be kept confidential. This means I won't be able to share the detail of this with Miss E, but I'd like to reassure her that I have considered everything.

Miss E is unhappy that Funding Circle didn't answer all her queries in a timely manner and provided contradictory information. I understand why Miss E wanted more frequent communication and updates. I appreciate that Miss E has spent time trying to find out more information and this has caused her frustration. Funding Circle has apologised for this. While Miss E's expectation is that there should be more frequent updates and every query she raises should be answered, Funding Circle says there will only be an update on a loan providing there is a material change. So clearly there is difference in position. I haven't found Funding Circle promised or was obliged to provide the level of service Miss E required. While I agree updates could have been better, ultimately, I don't think more detailed or frequent updates would have led to Miss E facing a different situation with regards to the losses she experienced on this loan. And I've already decided I think Funding Circle has treated her fairly and in line with its obligations in respect of the recovery actions after the loan defaulted.

Having reviewed the circumstances of this loan and the relevant evidence, I don't find that Funding Circle is responsible for the losses Miss E has incurred. I've found that Funding Circle did act in a fair and reasonable way when completing recovery actions on this loan.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 22 October 2022.

Daniel Little
Ombudsman