

## The complaint

Miss E complains that Funding Circle Ltd failed to carry out enough due diligence to ensure a company she lent to was creditworthy. She says that, because of this, Funding Circle incorrectly allocated her a loan.

## What happened

Miss E held a crowdfunding account on Funding Circle's peer-to-peer lending platform. It was an automated account where loan parts were 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 bands (A+ to E rated loans).

Miss E was allocated a loan in a business I shall refer to as "Company A" in April 2018. This was in line with her balanced risk preference. Her total investment in the loan was around £100 and following the loan being defaulted in April 2019, she received around £30 in interest and recovery payments.

Miss E complained to Funding Circle in July 2021. She said Funding Circle failed in the way it carried out due diligence on the borrower before allowing her to invest in the loan. Specifically, she said Funding Circle had failed to conduct sufficient due diligence and rate the risk correctly as well as not carrying out ongoing loan management in line with expectations. Because of this, she said Funding Circle shouldn't have allocated her the loan and that she had lost out financially.

Funding Circle looked into Miss E's complaint but didn't uphold it. In summary, it said:

- It was made clear to Miss E that her capital would be at risk when investing through its platform.
- It conducts stringent due diligence on all borrowers before offering a loan, however, unforeseen circumstances can occur, meaning that loans may experience financial difficulties.
- It has a responsibility to always pursue the most effective course of action and act with investors' best interests in mind.
- Losses are a natural part of lending, but when this happens, Funding Circle ascertains the best viable route to obtain funds to repay the loan.
- It was confident that it had gone to great lengths to attempt the recovery of the outstanding debt, with the loan facility been vigorously managed internally and it had also sought independent external advice to validate and confer any decisions with regards to pursuing the debts.
- Following this, the best route of action was to sell the loan to a third party and Miss E had since received the final recovery payment minus the collections charge and any associated legal costs.

Miss E didn't accept Funding Circle's findings and so she referred her complaint to this service for an independent review.

One of our investigators considered Miss E's complaint but didn't uphold it. In summary, he said:

- He obtained the financial information and the accounts Funding Circle gathered from Company A in order to carry out its due diligence. This included accounts for the year ending 31 October 2016 and 31 October 2017, bank statements from January to April 2018, an Experian credit report which identified Company A as being low risk as well as a personal guarantee from the director of Company A prior to approving the loan.
- He was satisfied that there was nothing within the financial documentation which would indicate that there were any issues with the borrower or that it was inappropriate for the loan to be acquired on Miss E's account. He didn't think Funding Circle acted outside of how it described the function of the account.
- He acknowledged that whilst the loan had been sold at a loss to a third party since it had defaulted, he said the terms and conditions allowed Funding Circle to decide the best route to take in order to make recoveries.

Miss E didn't agree with the investigator's view. She said that Funding Circle has failed to note that a bank loan was omitted by Company A in 'existing outstanding loans' section in the promotional material for the loan even though it was in accounts for the year ending 31 October 2017. She also said the bank loan would have shown in the bank statements if repaid monthly and that there was a legal charge for it on Companies House. As a result, Miss E felt Funding Circle had failed in its due diligence.

The investigator considered Miss E's further points but explained that it didn't change his opinion. He said the 'existing outstanding loans' section she had referred to was a feature from when investors could choose which loans to invest in. However, Miss E was automatically allocated the loan and so this feature wasn't relevant as she didn't review the financial information before investing. He also considered her comments about the borrower's existing loans and confirmed that Funding Circle was aware of this charge and considered it when it approved the loan.

As Miss E remained unhappy, the complaint has been passed to me to decide.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In reaching my decision, I've 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.”*

I’ve also borne in mind that the FCAs consultation papers on loan-based and investment-based crowdfunding platforms – including the references to the due diligence expectations placed on platforms.

As explained above, the loan subject to this complaint was added to Miss E’s account as part of the automated loan allocation process. This means she didn’t select the loan after reviewing a promotion – so I’m not considering whether she was provided with misleading information before deciding whether to invest. But rather whether Funding Circle acted in her best interests by allowing the loan to be available for allocation to her based on the selected investment criteria for her account. This included the due diligence it completed before allowing her to invest.

Funding Circle has provided this service with the evidence it collated including a credit check and financial statements on the borrower before accepting the loan and making it available on the platform. Having reviewed these, I agree with our investigator that nothing contained within this financial information suggests the loan shouldn’t have been approved. Whilst the credit check gave Company A a low risk rating, ultimately, Miss E had a balanced risk profile, meaning she could be allocated loans across the full range of risk bands.

I understand Miss E has concerns that Funding Circle may not have conducted proper due diligence on Company A as a bank loan wasn’t included in the ‘existing outstanding loans’ section in the promotional material for the loan. Regardless of whether this was included or not, I’m satisfied that Funding Circle was aware of the bank loan as it was included in the financial information it obtained before approving the loan. Therefore, it follows that Funding Circle considered the bank loan before approving the loan and allocating it to Miss E. As such, I can’t agree that Funding Circle failed in its due diligence.

I’ve also considered Miss E’s comments regarding the loan being sold to a third party following default. Having done so, I’m satisfied that Funding Circle’s terms and conditions allowed for it to sell the loan to a third party:

*“13.7. We, the Security Agent or the Security Holder will act in a fair and equitable manner to achieve maximum recovery for all affected Investors (and this may include agreeing new payment terms or selling the debt to a third party)”*

I’ve also not seen anything to suggest taking this cause of action wasn’t in Miss E’s best interests. Funding Circle has confirmed that there was no guarantee that recoveries could be made on the loan and taking this cause of action meant that the funds from the sale were returned to investors immediately, rather than incrementally over the remainder of the recovery process.

For these reasons, I’m not persuaded that failings by Funding Circle have led to Miss E being assigned a loan she shouldn’t have been.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 26 January 2023.

Ben Waites  
**Ombudsman**