

The complaint

Mr C complains that ArchOver Limited's actions have caused him a financial loss on peer to peer (P2P) investments he made on its crowdfunding platform. He says its failure to complete sufficient due diligence and monitoring of the loans resulted in him losing money.

What happened

Mr C made three investment into loans with the same borrower through ArchOver's P2P crowdfunding platform. He made investments into loans in February 2017 (£5,000), September 2017 (£3,000) and April 2018 (£10,000).

In the second half of 2018, ArchOver started to have concerns about the information it was receiving from the borrower. This led to further investigation and concerns that the borrower might be committing fraudulent activity in its reporting, to hide losses and fund other connected businesses. Despite assurances and with an agreed repayment plan in place with the borrower, further evidence led ArchOver to call in its all asset charge and appoint administrators. Following this it says it uncovered a sophisticated deception – including that debtor security was fictitious, bank statements falsified and insurance nullified. So, it started recovery action to try and return lenders' capital.

In July 2020, Mr C raised a complaint with ArchOver. He was unhappy that the promised controls that should be in place for the loans have proved to not have been in place – and feels that if they were, the recovery of the loans would have been possible. He said ArchOver misrepresented the loans – specifically the security and protection in place. He said he would not have invested without the protections that were promised.

ArchOver didn't uphold the complaint. In summary it said

- It didn't misrepresent the P2P loans Mr C invested in and put in place the security and checks for the loans.
- It didn't provide any advice to Mr C but instead acted as a facilitator between lenders and borrowers – and lenders pick investments suitable for their own risk appetite. Its website, and terms and conditions make it clear that capital is at risk.
- The loan description and loan definition provided to Mr C was more than adequate for him to make an informed investment decision.
- It carried out an extensive 'post default' review of its systems and engagement with the borrower.
- It followed the correct processes and procedures with regards to the management of the loan facility as per the terms and conditions.
- Following the borrower defaulting on the loan, investigation discovered a complex fraudulent misrepresentation by the borrower. The borrower was also using other facilities to 'mask' the true state of the business as it began to deteriorate.
- Administrators were appointed within a week of discovering the extent of the situation.

Mr C referred his complaint to our service for an independent review. I issued a Provisional Decision in May 2022. This is what I said:

“The crux of the complaint concerns ArchOver’s actions in relation to how it facilitated the investment opportunity and the administration of the relevant loans. In particular how it arranged for the relevant security to be placed as described in the promotion. I’ve reviewed the relevant terms and conditions, which sets out the responsibilities of ArchOver and lenders that use the platform (in this case Mr C).

ArchOver’s terms and conditions sets out the basis of this relationship. These explain:

*“The Platform enables Lenders to find suitable Borrowers and enables Borrowers to find suitable Lenders. On the Platform, we list projects where Borrowers require funds and display relevant information for lenders. We are not a Lender of money to businesses nor are we a Borrower nor are they our accounts receivable debts, stock-in-trade or other assets which are offered as security for repayment of borrowed funds. We act as a facilitator in transactions and in that capacity, we may provide tools that relate to processing the transaction and may collect repayment from a Borrower on behalf of a Lender, or collect funds from a lender to pass to a Borrower. We are not involved in any transaction between Borrowers and any insurance company or insurance brokers, although we may introduce a Borrower to an insurance broker with regard to our Secured and Insured service. We do not act as agent for the Borrower or Lenders but merely facilitate the communication between the Borrower and the Lenders and carry out some administrative tasks on behalf of the Lender in connection with the borrowing/lending or potential borrowing/lending, or facilitate the initial introduction of a Borrower and any Insurance Broker. As a result, the loan and security documentation are between each Lender and the Borrower (although we may be a party in the capacity of an administrator or security trustee) and each part of an actual or potential contract between a Borrower and a Lender (including without limitation the truth and accuracy of the warranties and assurances given, ability of Borrowers to repay or the ability of a Lender to lend) is solely the responsibility of the Borrower and Lender and it is the Lenders’ and Borrowers’ responsibility to verify these matters and the information provided, or in the case of insurance, is between the Borrower and the insurance company, again with each of the Borrower and the insurance company having the responsibility to verify the information provided and the ability of the other to carry out its contractual obligations. **We therefore disclaim all liability and responsibility relating to the content, information and materials posted by Borrowers and Lenders and any reliance placed on this by you.**”*

Essentially the relationship involves ArchOver bringing together prospective borrowers and lenders through the operation of a crowdfunding platform. It presents information on lending opportunities that investors can put funds towards. Lenders (such as Mr C) appoint ArchOver to act as its agent in relation to the loans they invest in.

The loans subject to this complaint were taken on the basis of the Secured & Insured (S&I) service provided by ArchOver. This meant the loans were considered to have added protection compared to the other services provided on the platform. In summary this meant the following would be in place:

- An all assets first ranking charge in place against the Borrower, registered at Companies’ House.*
- Borrower was to take out credit insurance over their Accounts Receivables to minimise the risk of bad insurance firm.*
- Credit analysis, due diligence and monthly monitoring of the Borrower.*
- A controlled bank account owned by ArchOver.*

In reaching my decision on the complaint, alongside the relevant terms I’ve taken into

account the regulatory obligations placed upon ArchOver at the time. The Financial Conduct Authority's (FCA) Principles for Business ("PRIN") set out the overarching requirements which all authorised firms are required to comply with. 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."

ArchOver is also required to act in accordance with the rules set out in the FCA's Conduct of Business Sourcebook (COBS). And the most relevant obligations here are:

- COBS 2.1.1R (1) "A firm must act honestly, fairly and professionally in accordance with the best interests of its client."
- COBS 4.2.1R (1) "A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."

So before approving the promotional material for the loans, ArchOver needed to satisfy itself that the campaign itself was fair, clear and not misleading. And it also needed to be satisfied that by approving the promotion and allowing its customers to invest, it would continue to be acting in its client's best interests. So this means I don't find that it's fair for ArchOver to rely on the terms and conditions to disclaim liability and responsibility relating to the content, information and materials provided by the borrower.

In order to satisfy itself of the fair, clear and not misleading nature of the claims or assertions made in the promotional material itself, ArchOver would need to carry out reasonable checks. What these reasonable checks involve, or indeed what they might be in any given case, is something which is very much left to each platform to determine and would vary according to the particular circumstances. It's clear that it wasn't the regulator's intention to provide a set of tick boxes which needed to be completed for a promotion to be approved. This is supported by what the FCA said 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's consultation paper was issued after Mr C's investment into the loans. But I consider the content has relevance when thinking about ArchOver's responsibilities. I say this because they clearly set out the FCA's view on good practice and compliance with existing rules and principles, applicable to at the time the investment was made.

Loans taken out in February and September 2017

For the first two loans Mr C invested in, I'm not minded to reach a decision that ArchOver is responsible for the losses claimed. I'll explain why.

Firstly, I've reviewed the documents (the "funding request") ArchOver produced to promote the loans to investors. These provide detail of the amount being requested for funding and purpose it was to be used for, details of the borrower company – including financial

information. It also provides details of what the security for the loans was and the insurance in place. The promotions also confirm that capital is at risk and provide a link to the risk warnings on ArchOver's website. These confirm the risk of the borrower's business failing and interest and capital payments aren't guaranteed, meaning you could lose all the capital invested.

Having reviewed the promotions for these loans, I haven't identified a falling in the way they were presented. I've considered whether the information contained within them was clear, fair and not misleading. The crux of the issues Mr C has raised surround the various protections that ArchOver should have had in place for a 'Secured & Insured' loan and in his view were not fully in place in one way or another. I've paid particular attention to the security that was described, and the concerns Mr C has raised about how ArchOver has put this in place.

I've seen evidence that the security was put in place and a fixed charge was registered. I acknowledge that once the loans were defaulted, ArchOver discovered through its recovery action that funds hadn't passed through its controlled account as expected -which essentially meant that the security couldn't be realised to repay investors. There is a disagreement between the borrower's business bankers and ArchOver about whether this should have happened in light of the charge that was registered. ArchOver has conceded that it was unlikely to win legal action against the bankers. I accept this is a complex issue and it isn't straightforward to understand who is at fault for the situation. In order to uphold Mr C's complaint and say that ArchOver had mis-represented the security in the promotion, I'd need to be satisfied that the information it provided was unclear or misleading.

I'm satisfied ArchOver didn't mislead Mr C about the security. The fact a charge was registered supports the validity of the information in the two funding request documents for the loans. During the recovery action, after default it established that significant falsification and hidden losses meant that the expected assets weren't available to be used to return Mr C's investment. One reason why the security wasn't effective in the recovery action, appears to be due to technical drafting of the fixed charge, making it difficult for ArchOver to challenge the way the borrower's bankers had allowed funds to flow outside of the controlled account. ArchOver is in dispute with the solicitors who drafted the fixed charge. It says it was entitled to rely on the professional advice it took when registering the charge, so can't be blamed for any drafting errors. I'm also conscious that when ArchOver challenged the bankers, they sought to defend their position legally – I understand on multiple grounds. As part of the recovery action and following legal advice, ArchOver has decided a claim against the drafting solicitors rather than bankers had more chance of success – which based on what I've seen seems a reasonable position to take. All of this leads me to the conclusion that even with the security in place, there was a risk that it wouldn't be sufficient to prevent losses to investors. This was largely due to the actions of the borrower (and its bankers) – which I don't find ArchOver can be held responsible for.

I understand Mr C's concerns about the security, but on balance I don't think there are sufficient grounds to say failings by ArchOver in how it was described in the loan promotion amount to misleading information being provided. There are a number of factors that have resulted in the security not being easily realisable. In order to reach a conclusion that misleading information about the security was provided by ArchOver, I'd need to be satisfied that the charge wasn't in place. Based on the available evidence, I don't think I can say to be the case. The issues relating to the validity of the charge are still in dispute and form part of the recovery action – which if successful would lead to Mr C receiving money returned to him to reduce the losses he says he has suffered.

As mentioned above these loans were described as secured and insured. So, I've looked at how the insurance element was presented to Mr C. The funding request reports for both

loans say one of the risk mitigation factors is that there is credit insurance (on the borrower's clients or debtors) in place through an insurance policy. I'm satisfied the insurance was in place but acknowledge it hasn't been able to be used for a successful claim. I've looked at the lender terms and conditions that were relevant to Mr C's account. These provide the following description for lenders about the credit insurance:

"...[lender] understands that any insurance cover taken out by the Borrower, as required pursuant to the applicable service, may not cover all accounts receivable lent against and that it may not recover all money lent or applicable interest or return on investment;"

So, I think this is clear to show that any insurance in place wasn't guaranteed to recover capital and interest. With these particular loans I understand a claim wasn't successful due to the alleged fraudulent misrepresentation by the borrower. I'm persuaded that ArchOver did provide clear information about the insurance. The fact a claim wasn't successful, doesn't in my opinion mean Mr C was misled about the insurance. And I don't find that it can be held responsible for the actions of the borrower.

I've also looked at the information ArchOver has provided to show that it had undertaken enough due diligence to satisfy itself on the essential information which the loan promotions were based. I've seen evidence of the checks ArchOver completed when firstly on boarding the borrower to the platform and also before agreeing for these two loans to be made available to investors on the platform. This included a credit analysis, which looked into background checks on directors and shareholders, reviewing management accounts and an analysis of business. For each loan a series of checks completed by both a loan and credit manager was completed before sign off. As part of the reports completed, information was gathered on the security – including validating the Bills of Exchange (BOE's) presented by the borrower. ArchOver confirmed these were validated against the borrower's management accounts - which were supplied by its professional accountants.

While it now appears that some of the information ArchOver gathered was inaccurate, it doesn't mean it must have failed Mr C. After the loan defaulted, further information has come to light about the information ArchOver was provided with by the borrower and its accountants. This appears to indicate false information was provided, which misled ArchOver as to the value of the security. Having considered the evidence provided – I'm satisfied that ArchOver did complete sufficient due diligence to comply with its obligations and I can't hold it responsible for the actions of the borrower. I think it completed proportionate checks and it was reasonable to rely in the information it was provided with before promoting these two loans.

I note Mr C has raised concerns about the monitoring of the borrower and its capability of meeting the loan repayments. As mentioned above, I've seen evidence of the due diligence that ArchOver completed before each loan was promoted and also that there were active discussions with the borrower about repayments. I do have some concerns about how the information ArchOver gathered as part of its monitoring was used to promote the third loan, which I will discuss below.

Mr C also raised a point about ArchOver's parent company lending separately to the borrower and this presented an incentive to approve refinance loans to protect the parent company's investment and created a conflict of interest. I haven't seen anything that would lead me to say there was a conflict of interest, or that this impacts the promotion of the loans Mr C decided to invest in. If Mr C has further information to support this aspect of his complaint, he should provide this, and I will consider it further.

In summary, I don't intend on upholding Mr C's complaint about these two loans. As per the risks warning provided, this type of investment didn't provide a guaranteed return of capital

and interest even though they were secured and insured loans. The risks that did materialise and resulted in the (current) failure to recover funds were in my view as a result of matters that it wouldn't be fair and reasonable to expect ArchOver to have known about or been able to foresee at the time it promoted these loans. It wouldn't be fair on the basis of hindsight, where errors and alleged fraud have come to light, to expect ArchOver to have known about them. It follows that I'm satisfied it didn't just approve the promotion at face value or without checking security was in place – and it was reasonable for ArchOver to conclude on the basis of the information available at the time that the information wasn't misleading.

Loan taken out in April 2018

I do have concerns about the last loan that Mr C invested into in April 2018 – and I'm currently minded to uphold this part of the complaint.

My first concern centres around whether ArchOver completed sufficient due diligence before promoting and allowing investors to lend. I've seen evidence that ArchOver were aware of issues with funds not flowing through the controlled account as early as January 2018. It says the borrower's bank manager called in early 2018 and challenged ArchOver on this. It says the call was instigated by the borrower, who knew the bank manager well. ArchOver has told us that as a result of this call it sent a communication to the bank to warn that all instruments and credits should flow through the controlled account and no consent was given (due to the fixed charge in place) for funds to flow through another account. ArchOver says it felt this was sufficient to resolve the issues identified.

Not long after this, ArchOver promoted the last loan Mr C invested in. We have asked ArchOver to explain what checks it did to ensure that the borrower was now passing funds correctly through the controlled account and not an alternative account – so as to ensure the statements in the loan promotion were accurate. ArchOver said it received accounts information from the borrower's accountant – and while this wasn't actual bank statements it was satisfied that this was sufficient to show funds were flowing through the accounts correctly. And it was only after appointing the administrators and when they recovered the full bank statements that it could see the reported accounts information was considerably different to the true position.

I've considered this information in light of the responsibility for ArchOver to act in the client's best interests (in this case Mr C as an investor in the loan) before allowing it to be promoted on the platform. Specifically, did it undertake enough due diligence to satisfy itself on the essential information on which any communication or promotion is based. In light of the known issues of funds not flowing correctly through accounts only a few months before the loan was promoted, I think it would have been reasonable for ArchOver to make checks beyond relying on the financial information produced by the accountant. In my view, completing further checks would likely, based on the information uncovered in the recovery action, have led to further scrutiny of the borrower's financial position and consideration of whether the information in the promotion was accurate.

I appreciate that ArchOver say they are entitled to rely on the integrity and professionalism of a chartered accounting firm and that the documents supplied are a true reflection of the business. But all rules and obligations must be considered in all the circumstances and the particular context of the loan promotion. In the particular circumstances of knowing that the borrower hadn't been adhering to the expected use of accounts in the past, I think additional checks should have been completed. ArchOver did have reason to complete more checks than it may usually have done, in light of the issues they had encountered only months beforehand. Had it have done this then, on balance, I'm persuaded it would have uncovered further concerns about the validity of the security – which would have prevented the loan being available for Mr C to invest in.

I've also found another reason to indicate that ArchOver has failed in its obligations to Mr C in respect of this loan. My other concern surrounds the requirement to ensure the information provided about the investment opportunity is clear, fair and not misleading. In the lender updates that were provided after the loan defaulted, it details that ArchOver were advised in March 2018 that a client (and a debtor) of the borrower's was in difficulties to the extent the borrower had to step in and take over the business to protect its, and by extension ArchOver's position. Shortly after this ArchOver promoted the April 2018 loan. I've reviewed the promotion and noted the following statements:

"We review all clients' financial situations on an ongoing basis so that immediate action can be taken if warning signs emerge e.g. overdue debtors and creditors;"

"The difference between investors in other platforms and those investing in ArchOver is the latter have less risk. This is because the loan monies are spread over more than one debtor, whilst in the former example, loan monies are usually specific to one debtor."

"We have a strong pipeline with our current clients who continue to revolve their current facilities."

This information indicates a very positive position on the borrower and its client base and there is a reduced risk. In the period shortly before and at the time of promoting this loan, ArchOver says it received reassurances from the borrower and its accountants about the exposure to the distressed client and that there was no undue concern. However, it later transpired through the administration process that the client in question was the borrower's largest debtor. ArchOver say it wasn't aware of this until the recovery investigation uncovered this fact.

My concerns are that the loan promotion presents that the borrower and its clients were in a strong position. The above statements indicate that finances are reviewed and immediate action can be taken in circumstances like overdue debtors. And that there's lots of diversification to reduce the risk. With this loan, there are factors that played into both of these statements. So it's reasonable for a potential investor (like Mr C) reading the promotion to assume if that were the case ArchOver would be on top of it – and certainly would mention it. ArchOver was aware of issues with the borrower at the time of loan promotion as it knew as early as March 2018 of difficulties with clients that required the borrower step in to protect its position. And given it claims to "review all clients' financial situations on an ongoing basis so immediate action can be taken if warning signs emerge" – it ought to have known the seriousness of the situation – and if it didn't, that's a failing in itself. Within the loan promotion there is no indication of problems with clients and rather an extremely positive picture of the client base was presented. While it's unclear exactly how much ArchOver knew about the exposure to this client, it knew there was a problem – so it was misleading not to reflect this. Had this information been made clear to Mr C, I think it would have led to him making a different decision on whether to invest in this loan. Taking both of the concerns I have about this loan, I think there have been failings by ArchOver that have led to Mr C investing in this loan when he otherwise wouldn't have"

Within my provisional findings I also proposed how ArchOver should put this right for Mr C – this is what I said:

"As I've reached the finding that Mr C would not have invested in this loan, I next need to decide what he would have otherwise done with the money he invested.

Having carefully considered all the available information and evidence, I currently think the fairest way to compensate Mr C is to assume a rate of return that is equal to average return

on loans of a similar risk profile (i.e. Secured and Insured loans) on ArchOver's platform. I say this because I'm satisfied that Mr C would have continued to invest on the platform, but I take the view that he would have invested differently. It is not possible to say precisely what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr C's circumstances when he invested.

My proposed compensation calculation requires ArchOver to:

- calculate how much Mr C has received back from his initial investment into the third loan - including any interest and funds that have been recovered and returned to him, the actual value;*
- then calculate how much Mr C would've received from an *average rate of return for loans of similar risk across the platform from the date he invested in loan the third loan until the end date of the term for that loan (B) - the fair value.*

*If B is greater than A, ArchOver should pay Mr C the difference. It should add additional interest at a rate of 8% simple per year on any loss from the loan end date to the date of settlement**. If A is greater than B, then Mr C hasn't suffered a financial loss and there will be no financial compensation to pay.*

** The average return means the net return – so incorporates positive performing loans and any default rates.*

*** Mr C has indicated that at the end of the term he would have used the returned capital to pay off debts. Also, by this point he would have been aware of the default of on his other two loans. So, I think it's reasonable to assume he wouldn't have invested further on the platform after this date, so any loss should be crystallised from this point.*

Finally, As ArchOver are still pursuing recovery actions on the loan – if these are still ongoing at the date of settlement, ArchOver should take ownership of the loan. If it is not possible for ArchOver to take ownership, then it may request an undertaking from Mr C that he repays any amount he may receive from the recovery distributions in the future. This is because it wouldn't be fair for Mr C to benefit from any future payments received from the loan when he's already been compensated."

Mr C responded to my provisional decision. In summary he said if ArchOver agree to the outcome provided, he would be prepared to accept it – including the compensation calculation set out for the and repayment of the 'Third Loan'. But if ArchOver don't agree he thinks further investigation is warranted in respect of the point he's raised in relation to the loan position of ArchOver and its parent company, to this particular borrower.

ArchOver responded and provided further comments for me to consider in summary it said:

- ArchOver does not act as an agent for the Lender. Its terms and conditions and Facility Agreements are governed by 36H and it only act as a 'facilitator' between parties (Lender and Borrower) and as a Trustee for Lenders when a loan is live. This is an important point with relation to paragraph '4' page 5 of the Ombudsman's findings around 'financial promotion'. The documentation is written and signed off for publication by the Borrower, not ArchOver. Its responsibility is as facilitator, but it does take extra steps to validate any statements made by the Borrower are correct.
- For the April 2018 loan, the Ombudsman makes a case around failure to make additional checks by ArchOver but fails to detail what these additional checks could have been. It carried out additional due diligence over the previous loans and it was heavily engaged with the borrower at meetings, along with the directors and key staff members (Head of Risk etc.) to discuss its worries. It also met with the professional advisors, where it asked for additional information to back up what was being talked

about and it was satisfied by flow of funds etc. It was also directly in contact with the borrower's bankers around the current account not being used.

- It is entitled to rely on the integrity of a chartered accounting firm, so doesn't understand why it is suggested it should not have been so reliant i.e. carried out more checks for the April 2018 loan. The validity of professional advisors is absolutely key and that is why it met and discussed with them a number of points to back up the information provided by the borrower.
- It was comfortable with the statements made by the borrower in the financial promotion. Research indicates that about 30% of SME's suffer bad debts each year. Working with many hundreds of companies, ArchOver regularly see bad debts. It would not be normal for any firm seeking finance over a P2P platform to detail every bad debt, so it doesn't see why it would be relevant to this borrower.
- The statement 'we review all clients financial situation....so that immediate action can be taken if warning signs emerge' *is* true. This was clearly demonstrated when the borrower stepped into the distressed client and took control.
- There is a paragraph that attempts to make the point that there is a wide spread of debtors – something ArchOver could validate with the debtor book, so no reason why this statement could not be made. The borrower also demonstrated in the meetings that it had a strong pipeline, so again there is no reason why this statement should not have been in the Funding Request.
- The Ombudsman makes a 'presumption' that he believes Mr C would likely not have invested if the Funding Request had more information been available. Its records indicate Mr C never reviewed the Funding Request document, but instead logged in, pledged, clicked the wire transfer and left the site. Based on this, it's hard to understand how Mr C could have been misled by the Funding Request if he never read it.

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.

Having considered the further comments made by ArchOver, I've not found reason to change the outcome I set out in my provisional decision.

Firstly, I note the further comments made about ArchOver's role in this investment – including the references made to the terms and conditions. I also acknowledge the point that the Funding Request was written by the borrower – but ArchOver did take steps to validate any statements made. As an operator of an electronic system in relation to lending in relation to P2P agreements, ArchOver had regulatory principles and obligations it needed to follow. This applies to the facilitation of the loans Mr C invested in. I set out the most relevant in my provisional decision – but for completeness I will repeat them below:

- 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."
- 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.”

As I haven't received further comments on the first two loans Mr C invested in as part of this complaint, my findings remain the same as those set out above in my provisional findings.

In respect of the third loan taken out in April 2018, ArchOver has raised further points for me to consider. I've noted the comments about the checks that ArchOver completed before making this loan available to investors. I also understand the points being made about relying on professional advisors. But I find the circumstances materially different between the first two loans Mr C complains about compared to the third loan. As I've previously explained, ArchOver needed to be satisfied that by approving the promotion and allowing its customers to invest, it would continue to be acting in its client's best interests. To satisfy this requirement it would need to carry out reasonable checks and this is something it needed to decide based on the particular circumstances of the investment opportunity it was promoting into this loan.

The key point here is that in early 2018 ArchOver had concerns about the borrower - and this was prior to this loan being agreed. It has acknowledged there were known issues of funds not flowing correctly through accounts only a few months before the loan was promoted. ArchOver told us it had received a call from the borrower's bank manager challenging the flow of funds through accounts. I've seen the letter ArchOver sent following this conversation to press home its point that funds must not pass through alternative accounts. I'm not persuaded that this letter provides clear confirmation that an agreement had been reached. And I've not seen that the borrower or the bank responded to that letter to acknowledge that it agreed to the content. It comes across as more of a stand-off than a resolution of a disagreement.

So, in this circumstance, when promoting loan three I think it would have been reasonable for ArchOver to take steps in its due diligence to show how it satisfied that the earlier concerns it had were no longer an issue. It is not for me to say what additional checks it should have completed, but clearly during the administration process only months later ArchOver was able to uncover significant issues. It has explained in the default report it obtained copies of full bank statements – and it confirmed these showed a considerably different position to the management information it had received from the borrower. So this is just one example of checks that could have been completed and led to the loan not being made available to invest in. It remains that I'm persuaded ArchOver failed to fulfil its obligations – specifically in respect of Principle 2 (conducting its business with due skill, care and diligence) and Principle 6 (paying regard customers interests and treating them fairly). Had it done so, I don't think it ought to have gone ahead and placed the loan on the platform for Mr C to invest in.

I've considered the comments ArchOver have made about the Funding Request document being clear, fair and not misleading – which was its obligation as it was financial promotion that it approved. As mention above, whether the borrower wrote the document or ArchOver did, it still had obligations to ensure the contents met that criteria. I acknowledge the points about the statements made in the document. But when considered with the information available to ArchOver about the borrower's business, I remain of the opinion that it was misleading for ArchOver to know of the problem, but for this not to be reflected in any way.

With regards to whether Mr C read the pitch before he invested. Mr C says as it was more than four years ago, he can't specifically remember exactly what he reviewed. He said his decision to invest was based on the information provided to him by ArchOver – this included the project's Management Summary. But he wouldn't have made the decision to invest in this particular loan solely on the above. He says ArchOver provided detailed information to

him about the borrower – which was continuous ‘good news’ reported on the many great and important projects that the borrower had supported with ArchOver loans.

On balance, I don’t think Mr C invested without reviewing any information from ArchOver but I can’t be certain that he relied on the statements I’ve highlighted in the Funding Request. But even, if he didn’t rely on them to make his decision to invest, I’ve found another reason why the complaint should be upheld (detailed above), which isn’t specifically related to the highlighted statements in the Funding Request document.

Having considered the further submission provided by ArchOver, I haven’t found reasons to change the conclusion I reached in my provisional decision. So, it follows that I uphold the complaint made about the sale of loan three in April 2018.

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 had not have invested in this loan. So I’ve considered what he would have otherwise done with the money he invested.

Having carefully considered all the available information and evidence, I think the fairest way to compensate Mr C is to assume a rate of return that is equal to average return on loans of a similar risk profile (i.e. Secured and Insured loans) on ArchOver’s platform. I say this because I’m satisfied that Mr C would have continued to invest on the platform, but I take the view that he would have invested differently. It is not possible to say precisely what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr C’s circumstances when he invested.

To compensate Mr C fairly, ArchOver must:

- calculate how much Mr C has received back from his initial investment into the third loan - including any interest and funds that have been recovered and returned to him, the actual value;
- then calculate how much Mr C would’ve received from an *average rate of return for loans of similar risk across the platform from the date he invested in loan the third loan until the end date of the term for that loan (B) - the fair value.

If B is greater than A, ArchOver should pay Mr C the difference. It should add additional interest at a rate of 8% simple per year on any loss from the loan end date to the date of settlement**. If A is greater than B, then Mr C hasn’t suffered a financial loss and there will be no financial compensation to pay.

* The average return means the net return – so incorporates positive performing loans and any default rates.

** Mr C has indicated that at the end of the term he would have used the returned capital to pay off debts. Also, by this point he would have been aware of the default of on his other two loans. So, I think it’s reasonable to assume he wouldn’t have invested further on the platform after this date, so any loss should be crystallised from this point.

Finally, As ArchOver are still pursuing recovery actions on the loan – if these are still ongoing at the date of settlement, ArchOver should take ownership of the loan. If it is not possible for ArchOver to take ownership, then it may request an undertaking from Mr C that he repays any amount he may receive from the recovery distributions in the future. This is because it wouldn’t be fair for Mr C to benefit from any future payments received from the loan when he’s already been compensated.

My final decision

I uphold the complaint in part. My final decision is that ArchOver Limited should pay Mr C the amount calculated as 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 22 July 2022.

Daniel Little
Ombudsman