

## The complaint

Mr W complains that Edinburgh Alternative Finance Limited trading as LendingCrowd has suspending peer-to-peer lending on its crowdfunding platform. He also feels it's unfair for LendingCrowd to charge him a fee for withdrawing whilst it's not providing a lending service.

## What happened

Mr W has peer-to-peer crowdfunding accounts with LendingCrowd.

LendingCrowd is a loan-based crowdfunding platform which allows investors to lend money to prospective borrowers in return for interest payments. An investor agrees to lend a proportion of the total loan a borrower is looking to borrow, and in return an investor receives interest. LendingCrowd provided a Loan Market on its platform in which investors could access their money early by selling their loan parts to other investors or purchasing existing loans from investors.

In March 2020 LendingCrowd made the decision to stop new retail lending while it evaluated the potential impact of the Covid-19 pandemic. In December 2020 LendingCrowd sent an update to investors advising them that it was no longer accepting any new deposits or new investors onto the platform. And in January 2021 LendingCrowd informed investors of the temporary suspension of its Loan Market.

Mr W complained to LendingCrowd as he was unhappy that he was unable to invest in new loans either through new loans coming on to the platform or through purchasing existing loans. He also felt it was unfair for him to have to pay a 1% withdrawal fee if he wanted to exit the platform considering LendingCrowd was no longer providing new lending.

LendingCrowd considered Mr W's complaint but didn't uphold it. In summary, LendingCrowd explained:

- In temporarily suspending the Loan Market, it's acted in line with its interpretation of the Financial Conduct Authority's ("FCA") requirements that state where loans are priced by risk, their price must reflect their status.
- Due to the changes within the economy and restrictions that impacted its borrowers, it's possible that borrowers' risk profiles have changed since the point of underwriting loans.
- Its terms and conditions don't guarantee liquidity for sale of loan parts on its Loan Market.
- The 1% withdrawal fee is LendingCrowd's remuneration for the processing of loan repayments and distribution of payments to lenders.
- This fee is not associated with the re-investment of lender capital and so it doesn't feel that an otherwise early exit from the platform due to unforeseen and uncontrollable changes in the economy warrants its fees to be waived. Particularly where lenders have, and will continue to, receive the benefit of the platform's services.

Mr W didn't accept LendingCrowd's response and so he referred his complaint to this

Service for an independent review.

An investigator at this Service looked into Mr W's complaint but felt LendingCrowd had acted fairly. In short, she said:

- LendingCrowd had reached out to all of its borrowers to offer the option for a repayment holiday due to the effects of the Covid-19 pandemic - ensuring less borrowers defaulted on their loans.
- The impact of the Covid-19 pandemic meant that there was reduced liquidity.
- Having reviewed the actions of LendingCrowd, she considered that it had made a legitimate commercial decision to suspend the loan market.
- There was no requirement for LendingCrowd to consult its investors prior to doing so.
- She'd reviewed the terms and conditions of Mr W's account and noted LendingCrowd had always made it clear that there would be a withdrawal fee of 1%. Therefore, she said the fee would be payable whenever a withdrawal was made from the account (irrespective of when or why the withdrawal was made).
- The fee was not linked to the reinvestment of Mr W's capital and so she didn't agree that it was unfair for LendingCrowd to charge the withdrawal fee.

Mr W didn't accept the investigator's findings. He said it was unfair for LendingCrowd to withdraw the service that he'd signed up to and yet still charge the full fee for that service. He remained of the opinion that LendingCrowd should allow him to lend at his own risk or significantly reduce the fee it charges when it hasn't provided any of its lending services.

As such, the complaint was passed to me to decide.

I issued a provisional decision in September 2022 explaining why I didn't think the complaint should be upheld. I include this below:

### ***What I've provisionally 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 Mr W has provided. I can confirm that I've read and considered his submissions in their entirety. In reaching my provisional decision, I've considered LendingCrowd's regulatory obligations. LendingCrowd is authorised and regulated by the 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."*

*LendingCrowd 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.”
- COBS 18.12.17R “Where a firm that determines the price of P2P agreements is facilitating an exit for a lender before the maturity date of a P2P agreement, the firm must ensure that the price offered for exiting the P2P agreement is fair and appropriate.”

*LendingCrowd needed to ensure that the information it gave Mr W regarding his account was clear, fair and not misleading. It also needed to pay due regard to the interests of its customers and, more specifically in this case, ensure any price offered for exiting loan parts was fair and appropriate.*

*LendingCrowd’s terms and conditions relevant at the time Mr W opened his account explained:*

*“11.1 Sellers may sell Loan Parts to other Lenders through the Loan Market.*

*[...]*

*11.6 We give no guarantee as to the time that it may take for a Seller to sell any Loan Part, nor that there will be any Buyer for a Loan Part.”*

*From these terms and conditions, I think LendingCrowd made it clear to Mr W that whilst the Loan Market provided an option for Mr W to explore when looking to purchase existing loan parts, his ability to do so was never guaranteed. I appreciate LendingCrowd didn’t explain it could pause the Loan Market on a temporary basis, but I don’t think this renders the promotion of investing through LendingCrowd misleading. I’m satisfied that enough information was given to Mr W to make him aware that investing via the Loan Market wasn’t guaranteed.*

*LendingCrowd has explained why it decided to pause new retail lending and suspend its Loan Market. Notwithstanding the fact that I don’t think selling or buying on the Loan Market was guaranteed or contractual, I’ve considered its reasons and think they’re also fair and reasonable in the circumstances it faced during the onset of the global pandemic. As outlined above, LendingCrowd must ensure that it fairly and appropriately prices loan parts sold on the Loan Market. Clearly, its ability to do so had been impaired by the pandemic. Generally, investees’ ability to repay loans had been affected by the pandemic which in turn made lending riskier. Ultimately, LendingCrowd’s choice to pause the Loan Market is a commercial decision which it’s entitled to make. This isn’t something this service can change. Instead I’ve looked at whether Mr W has been treated unfairly as a result of that decision. Whilst I appreciate LendingCrowd’s decision to pause the Loan Market is inconvenient for Mr W as he wants continue to invest at his own risk, I’m conscious that allowing him to do so could be unfair due to the increased risk of the loans defaulting and capital lost. Whilst it’s not clear to what degree the risk of all the loan parts has increased by, it’s not my role to determine this.*

*The risk position is established at the moment a loan is taken out by the borrower and the price the borrower pays remain the same throughout. However, the price a seller of a loan receives and consequently, how much a buyer of a loan pays can’t be subsequently repriced.*

*I say this as the risk of a borrower not repaying a loan can change from the inception of the loan and as such the purpose of COBS 18.12.17R is to ensure a loan is fairly priced in consideration of the risk at the time a loan is transferred from one investor to another.*

*LendingCrowd has also explained that, as a result of reduced liquidity due to no new loans and a large number of loans unable to be sold on the Loan Market, it took the decision to stop accepting any new lender deposits and new lender sign ups. Again, LendingCrowd's choice to stop new lending is a commercial decision which it's entitled to make. And again, this isn't something this service can change. I don't think Mr W has been treated unfairly as a result of that decision, as he continued to benefit from interest on his existing lending and he was able to withdraw funds not invested and could invest this elsewhere. I appreciate he had to pay a withdrawal fee to do so, but I will address why I think it's fair for LendingCrowd to charge this fee below.*

### Withdrawal fee

*Mr W has also raised concerns around LendingCrowd's 1% withdrawal fee as he doesn't think it's fair for him to be charged this when LendingCrowd isn't providing a full service. LendingCrowd has explained that Mr W was made aware of the fee when he opened his accounts with them. Its terms and conditions explained:*

*"We charge a withdrawal fee (the "Withdrawal Fee") of 1.00% of the capital element of any Lender Funds withdrawn from a Passive Account, whether by transfer out, transfer to another account or, when employed under a Passive ISA, transferred to another ISA manager. The Withdrawal Fee will be deducted from the Lender Account immediately prior to the payment or transfer of such Lender Funds."*

*As such, I'm satisfied Mr W was made aware of the withdrawal fee. Furthermore, LendingCrowd has explained that the 1% withdrawal fee is remuneration for the processing of loan repayments and distribution of payments to lenders. It says the fee is not associated with the re-investment of lender capital and so it's chargeable regardless that LendingCrowd has decided to stop new retail lending. As such, I'm persuaded that it's fair and reasonable for LendingCrowd to continue to charge this fee. It's clear that, despite Mr W not investing in new lending, LendingCrowd would still continue to collect and process borrower repayments on his existing lending and so I'm not persuaded that LendingCrowd should waive this fee for Mr W.*

*So taking into account all of the above, I'm satisfied that Mr W has been treated fairly and I don't think it was unreasonable for LendingCrowd to take the action it did in response to the Covid-19 pandemic.*

LendingCrowd accepted my provisional findings but Mr W didn't. In summary, he said:

- Whilst he accepts that LendingCrowd's decision to temporarily stop new lending may have been an entirely reasonable approach for a short period, the Loan Market remains shut and so he questioned how long it would need to be closed for it to be unreasonable.
- He wishes to make loans in the full knowledge that some will fail and he's been prevented from doing so for over two years now.
- He's left with the two options of either allowing his money to sit in an account earning no interest (or hardly any) or to withdraw and incur the 1% fee for doing so despite LendingCrowd not providing the service he signed up for.
- He feels he should be allowed to withdraw without incurring the 1% withdrawal fee.

### **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.

Whilst I fully appreciate Mr W's frustrations regarding LendingCrowd's decision to continue to pause the Loan Market, my findings remain unchanged.

As mentioned in my provisional findings, LendingCrowd's choice to pause and to continue to pause the Loan Market is a commercial decision which it's entitled to make. This isn't something this service can change. I've considered whether Mr W has been treated unfairly as a result of that decision and I don't think he has.

Mr W has the option to withdraw his money if he's unhappy with LendingCrowd's decision and whilst he may incur the 1% withdrawal fee for doing so, I've previously explained why I think it's fair and reasonable for LendingCrowd to charge him this fee. Despite the Loan Market being paused, LendingCrowd has continued to collect and process borrower repayments on his existing lending and the 1% withdrawal fee is remuneration for this. This work by LendingCrowd has already taken place over the entirety of his time investing through the platform and so whilst I appreciate he feels he has no choice but to withdraw now, I'm satisfied LendingCrowd has provided a fair and reasonable explanation as to why the fee should be deducted.

### **My final decision**

My final decision is that I don't uphold this complaint for the reasons I've given above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 October 2022.

Ben Waites  
**Ombudsman**