

The complaint

Mr S complains that Funding Circle Ltd unfairly removed the opportunity for him to sell his peer-to-peer crowdfunding loans on its secondary market.

What happened

Mr S opened a peer-to-peer (“P2P”) crowdfunding account with Funding Circle in July 2017 and an Innovative Finance ISA (“IFISA”) account in April 2019. Funding Circle’s platform allowed investors to lend money to prospective borrowers in return for interest payments. Funding Circle provided an auto-sale tool on its platform. This provided a way for investors to access their money early by selling their loan parts to other investors by way of a secondary market.

In April 2020 Funding Circle made the decision to temporarily pause the secondary market and to stop new retail lending as part of its ongoing measures to protect investor returns while it evaluated the potential impact of Covid-19 pandemic. This meant that investors were no longer able to access their money early by selling their loan parts before the loans matured.

Mr S complained to Funding Circle as he felt it was unfair for it to remove the option for him to be able to sell his loan parts early on the secondary market. He said he would never have invested through the platform if he knew there was no chance of selling his loan parts early.

Funding Circle considered Mr S’s complaint but didn’t uphold it. It said the ability to sell loan parts on the secondary market wasn’t ever guaranteed and this was made clear in its terms and conditions.

Mr S remained unhappy with Funding Circle’s response and so he referred his complaint to this service for an independent review.

An investigator at this service considered Mr S’s complaint but didn’t uphold it. She explained that Funding Circle’s terms made it sufficiently clear that there was no guarantee that loan parts would be sold on the secondary market. She said that Funding Circle’s decision to pause its secondary market was a commercial decision and isn’t something our service can comment on. However, she’d considered whether Mr S had been treated fairly as a result of its decision. She explained that Funding Circle’s regulatory obligations meant that it needed to fairly and appropriately price loans sold on the secondary market and she explained that the conditions caused by the uncertainty of the Covid-19 pandemic meant that it wasn’t possible for Funding Circle to do this. She also said that Funding Circle’s terms and conditions explained that it could make changes to the services it provides and so she felt Funding Circle’s decision to pause the secondary market and eventually close it was fair and reasonable.

Mr S didn’t agree with the investigator’s opinion as he felt he was misled by Funding Circle regarding his ability to sell his loan parts when opening his accounts.

As such, 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 considered Funding Circle's regulatory obligations. Funding Circle 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."*

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."*
- 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."*

Funding Circle needed to ensure that the information it gave Mr S regarding his accounts 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.

Funding Circle's terms and conditions relevant at the time Mr S opened his account explained:

"10.2 You can withdraw available funds that have not been lent or allocated for lending from your Investor Account. If you want to have access to any funds that have already been lent, you will need to transfer your Loan Parts by selling them to other Investors."

[...]

10.6. There is no guarantee that your Loan Parts will be transferred, nor any assurance as to how long it may take to do so."

From these terms and conditions, I think Funding Circle made it clear to Mr S that if he wanted to access his funds early he would need to either withdraw what funds he had available or attempt to sell his loan parts early to other investors. Whilst the secondary

market provided an option for Mr S to explore when looking to access his funds early, Funding Circle made him aware that his ability to sell loan parts in this way was never guaranteed.

This point is also made clear throughout Funding Circle's website and investor guide which further explains that the ability to do so depends on there being demand from other investors. I appreciate Funding Circle didn't explain it could pause the secondary market on a temporary basis (or on a permanent basis as it eventually did) but I don't think this renders the promotion of investing through Funding Circle misleading. I'm satisfied that enough information was given to Mr S to make him aware that selling via the secondary market wasn't guaranteed and he ought to have only invested if he was happy with the risk of not being able to exit early.

Funding Circle has explained why it decided to pause the secondary market. Notwithstanding the fact that I don't think it 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, Funding Circle must ensure that it fairly and appropriately prices loan parts sold on the secondary market. Clearly, its ability to do so had been impaired by the pandemic. Generally, investee businesses' ability to repay loans had been affected by the pandemic which in turn made lending riskier. Ultimately, Funding Circle's choice to pause the secondary 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 S has been treated unfairly as a result of that decision. Whilst I appreciate Funding Circle's decision to pause the secondary market is inconvenient for Mr S wants access his money straightaway, I'm conscious that allowing him to sell his loan parts to other investors 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 Mr S's loan parts has increased, it's not my role to determine this.

Funding Circle has also provided further reasons for pausing and then closing its secondary market since the complaint has been passed to me. From these, it's clear that there were several considerations which Funding Circle has thought about whilst implementing the pause to the secondary market. These include difficulty with pricing, a change in lending focus, diversification and illiquidity. Clearly market conditions meant that Funding Circle made the decision to not to take on new loans and consequently to not have a secondary market. Uncertainty continued for a long period due to the impact of the pandemic on the wider economy. During this time, Funding Circle made commercial decisions on changes to its operations and has focused away from P2P lending. Funding Circle wasn't prohibited from making decisions it benefited from, as long as it took the interests of its customers into account first. And for the reasons I've given, I'm persuaded that's what it did, especially considering the ability to sell via the secondary market was never guaranteed. Mr S has continued to receive interest on his loan parts and has the ability to withdraw his loan repayments and so I don't think he's been treated unfairly as a result of Funding Circle's decision.

I also think it's important to also note that even if Funding Circle hadn't made the decision to temporarily pause and remove the secondary market, it's not clear whether Mr S would have been able to sell his loan parts to other investors. Clearly investor appetite had diminished due to the global pandemic and Funding Circle has explained that queues to sell on the secondary market had increased considerably go directly to new loans on the platform rather than to loans on the secondary market.

So taking into account all of the above, I'm satisfied Funding Circle's decision was fair and reasonable in all the circumstances and I'm not persuaded Mr S has been treated unfairly as a result of Funding Circle's decision.

My final decision

My final decision is that I do not uphold this complaint for the reasons I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 October 2022.

Ben Waites
Ombudsman