

## **The complaint**

Mr R complains that Folk2Folk Limited didn't pay him interest due on a loan he invested in, following an early redemption by the borrower.

## **What happened**

Mr R holds a peer-to-peer crowdfunding account with Folk2Folk in which he lends money to borrowers in return for interest payments.

Mr R complained to Folk2Folk in January 2022 as he was unhappy that he only received one month's interest as payment in lieu of notice on one of the loans he invested in. He said the loan contract stipulated that if the borrower redeemed the loan early, he would receive three month's interest in lieu of notice. So he felt he was owed £216.66 in additional interest.

Folk2Folk looked into Mr R's complaint. In summary, it said:

- Section 31 of its terms and conditions allow it to vary and alter its terms and conditions at any time.
- It made changes to the terms and conditions (effective from December 2021) and details of the changes were posted on its website.
- The change included commercial loan redemption terms in alignment with its development and construction loan redemption terms so that all investors would receive one month's interest when a loan redeems early, irrespective of whether notice has been served or not. It also removed a borrower early redemption fee of £250.
- This change was made because it was very difficult for borrowers to predict an exact repayment date and provide three months' notice, particularly when repayment comes by way of a refinance or sale of security.
- It found that borrowers often gave an estimated redemption date which was communicated to investors and if delayed, caused frustration for investors expecting repayment of capital.
- Equally, it said borrowers were penalised with increased interest rates if the loan was not repaid on the expected date and often through circumstances beyond their control.

Whilst it didn't think it had done anything wrong, Folk2Folk acknowledged that Mr R may not have seen the notification of the changes via its website and so it offered to pay him the £216.66 he felt was owed as a gesture of goodwill.

Mr R didn't accept Folk2Folk's offer as it required his acknowledgment that the change to the terms is also applicable to his other loans. Meaning he wouldn't be entitled to receive three months' interest in lieu of notice should any of his outstanding loans be redeemed early. Mr R also felt Folk2Folk shouldn't be able to apply the changes retrospectively to loans he's already invested in. So he referred his complaint to this service for an independent review.

An investigator at this service considered Mr R's complaint and felt the offer Folk2Folk had made was fair. In summary, they said:

- They'd considered the reasoning and justification Folk2Folk had given for reducing the interest payable in lieu of notice, whether it struck a fair balance between Folk2Folk's interests and Mr R's, and whether the changes had an unfair impact on him.
- Having done so, they were satisfied Folk2Folk had good reason for implementing the changes to its terms and that they were made with both investor's and borrower's interests in mind.
- They felt Folk2Folk had given Mr R reasonable notice of the change and allowed him to exit the platform if he didn't want to accept the changes. And by continuing to use the platform and not exiting, he'd effectively accepted the changes.
- As such, they said Folk2Folk's offer was fair.

Mr R didn't accept the investigator's findings. Whilst he agreed that Folk2Folk should be reviewing terms and conditions to loans for the benefit of all, the reviewed terms cannot or should not be applied retrospectively as this would violate what was agreed in the individual loan contracts.

### **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.

It's clear to me that Folk2Folk's offer puts Mr R back in the position he would have been in had he received three month's interest on the loan in question. I understand Mr R is unhappy that he may not receive three month's interest in lieu of notice on his other loans but it's not apparent whether any of his other loans have been repaid early and so I can't award compensation for something that hasn't yet happened.

In terms of Mr R's broader concerns, I don't think Folk2Folk has acted unfairly in amending the notice period on the loan in question. I'll explain why.

Folk2Folk implemented a change to its terms and conditions in December 2021, which meant that all lenders would receive one month's interest, rather than three months' interest, when a loan redeems early, irrespective of whether notice is served. In addition, the borrower early redemption fee of £250 was removed.

I understand Folk2Folk has relied upon the following term in order to amend the redemption period:

#### ***"31. RIGHT TO VARY THE TERMS AND CONDITIONS***

*31.1 Folk2Folk reserves the right to amend, vary and alter these Terms and Conditions at any time to comply with law or to meet its changing business requirements by posting the updated versions to the relevant page on the Site. Folk2Folk may not always be able to give a Participant advance notice of such updates or amendments, but it will always post them on the site. Each participant is expected to check this page from time to time to take notice of any changes Folk2Folk has made, as they are binding on a participant. Some of the provisions contained in these Terms and Conditions may also be superseded by provisions or notices published elsewhere on the site. By continuing to use the Site, and our services in receiving and allocating funds and payments, a participant agrees to be bound by the terms of such updates and amendments."*

This type of term is known as 'variation clause' which allows Folk2Folk a broad scope for

amending its terms, for reasons including legal changes. So under these terms and conditions, Folk2Folk reserved the right to amend the redemption period. However, I've also considered what is fair and reasonable in the circumstances, guided by relevant law and regulations.

The Financial Conduct Authority ("FCA") has published guidance on the fairness of variation clauses in financial services consumer contracts. This guidance is useful in considering whether the change made unfairly impacted Mr R. Amongst other things, the guidance says a firm should aim to strike a fair balance between the legitimate interest of the firm and the consumer.

Folk2Folk has explained that it made the changes to make the process for early repayment fairer and simpler for both lenders and borrowers. It says it wasn't reasonable for borrowers to be expected to predict an exact repayment date three months in advance – especially when repayment was to be made by way of a refinance or sale of security. It also says the changes prevented uncertainty for lenders when a full repayment hasn't been achieved as anticipated. Folk2Folk has obligations to ensure that all its clients are treated fairly at all points of the transaction and this includes borrowers as well as lenders. Whilst I appreciate Mr R doesn't think the change is in his best interest, I'm persuaded the change aims to strike a fair balance between investor's and borrower's rights by making the process fairer for all parties.

So in my view, it was fair and reasonable for the early redemption notice period to be reduced from three months to one month on Mr R's loan.

### **Putting things right**

I think Folk2Folk's offer is fair and so it should pay Mr S £216.66.

### **My final decision**

My final decision is that Folk2folk Limited's offer is fair and I instruct it to pay the £216.66 offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 December 2023.

Ben Waites  
**Ombudsman**