DRN-4168012

The complaint

Mr P complains that Fluro Platform Limited trading as Lending Works unfairly deducted money from his Innovative Finance ISA following changes it made to its terms and conditions.

What happened

Mr P held a P2P lending account for a number of years on Lending Work's platform and invested funds in return for interest.

In January 2020, Lending Works changed its Lender Platform Terms and Conditions to allow it to vary the interest rates investors received on existing loans, in order for it to replenish the Shield – a segregated account used for the purpose of making payments to a lender when a borrower does not meet its obligations under a P2P agreement. Prior to this change, interest rates for ongoing loans were fixed.

In April 2020, Lending Works emailed investors to explain that a Normalisation Period was being introduced in response to the Covid-19 pandemic. The Normalisation Period resulted in a pause on all new retail investors signing up on the platform, a pause on all new investments on the platform, as well as a suspension of the secondary market – a mechanism which allowed investors to sell their existing loans to other investors. Lending Works also introduced a 2% servicing fee in order to cover overheads associated with servicing the loan portfolio.

Lending Works also introduced a Lender Rate Adjustment under the changed Lender Platform Terms and Conditions to temporarily (initially for 90 days) divert all interest repayments to the Shield for all active loans on the platform. This meant that Mr P received capital repayments only on his loans. The Normalisation Period and Lender Rate Adjustment was extended for an additional 90 days in July 2020 and again in October 2020.

In November 2020, Lending Works emailed investors to explain that it was introducing negative interest rates due to the Shield requiring additional funding in order to protect investors. Lending Works also explained that it intended to resume lending and reopen to retail investors in January 2021 and that it would no longer be charging the 2% servicing fee once lending resumed. It also explained that the secondary market would remain suspended until further notice.

Following this, Mr P raised a complaint to Lending Works regarding deductions Lending Works had made from his account. He said he was owed £1,543.34.

Lending Works looked into Mr P's complaint and partially upheld it. In summary, it said:

- It had emailed Mr P in November 2019 to notify him of the Lender Platform Terms and Conditions changes.
- It allowed a period of more than 30 days before the changes were applied to allow any investors who did not wish to continue investing to use the secondary market in order to sell any outstanding loans to other investors. It confirmed that it would waive

any fees which would have otherwise been payable to Lending Works during this window. These included the two fees charged when a secondary market transaction occurs – a fixed transaction fee payable to Lending Works and a variable fee payable to the investor purchasing the loan (this fee is only charged if the interest rate on a loan is lower than the Target Annualised Return at the time an investor sells the loan).
- Rather than allowing a deficit to build in the Shield, with the result that certain investors would be exposed to losses that would not be covered by the Shield, it decided it was in investors' best interests as a whole to divert interest into the Shield by varying the interest rate (eventually to a negative rate). It said this effectively spread the losses across all investors equally (in proportion to their investment) and avoided a situation where some 'unlucky' investors would be disproportionately negatively impacted.
- Although Lending Works felt it had acted fairly and in line with its Lender Platform Terms and Conditions, it recognised Mr P's dissatisfaction and offered £100 as a gesture of goodwill.

Mr P didn't accept Lending Works' findings so he referred his complaint to this service for an independent review.

Having referred his complaint to our service, Lending Works contacted us to make an offer to Mr P. It agreed to put him back in the position he would have been in had he made use of the fee-free exit period and negative interest rates weren't applied. It said this amounted to compensation of £745.21, plus it increased its offer for any distress and inconvenience caused from £100 to £500. So in total, the offer was £1,245.27.

Mr P didn't accept this offer as he said it was short of the £1,543.34 he said he was owed.

The investigator considered Lending Works' offer to be fair. In summary, he said:

- Where a business done something wrong, our service aims to put the customer back
- in the same position they'd be in if the wrongdoing never happened.
- If Lending Works had never introduced variable rates, then the Shield would have likely run out of funds, based on the rapidly decreasing balance in 2019. And so, Mr P would have likely suffered significant capital losses.
- During the period negative interest was applied to Mr P's account (April 2020 to February 2022) his account balance shrank from £18,523.43 to £17,778.16. This is a reduction of £745.27, which Lending Works have offered to reimburse him.
- Lending Works' offer is in recognition, at least in part that had it been clearer about the implications of the change in terms in November 2019, many investors such as Mr P would have exited the platform within the 30-day provided.

As no agreement could be reached, the complaint was 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.

I want to assure Mr P that I've carried out an independent review and considered everything that both parties have submitted. We provide an informal complaint handling service as a free alternative to the courts and this is reflected in the way I've approached the complaint. It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome – this means I might not mention everything Mr P has said, but I will comment on everything that makes a difference to the outcome of the complaint.

Whilst there still seems to be some dispute as to whether Lending Works acted fairly in introducing the changes to the Lender Platform Terms and Conditions, considering it's agreed to compensate Mr P, my decision will focus solely on whether Lending Works' offer is fair and reasonable in all the circumstances.

This service's starting point for redressing complaints is to try and put the consumer back in the position they would have been in if the changes hadn't happened. Whilst I don't think it's necessary in this case to comment on Lending Works' decision to make the changes, in determining whether Lending Works' offer is a fair one, I do need to consider what is likely to have happened to Mr P's investment had the changes not been made.

Lending Works has provided statements showing the balance of the Shield and from these it's clear that at the time of implementing the changes, funds in the Shield were depleting. The changes were introduced shortly before the Covid-19 pandemic began, which had a significant impact on lenders abilities to make repayments. I think it's reasonable to say that Lending Works lenders would have been impacted by this and on balance, it's likely, given the time Mr P had been investing on the platform and the diversification of his portfolio that losses would have applied to his account had the Shield not been topped up by the diversion of interest. Whilst I'm not able to say with any certainty what the extent of his losses would have been, given that Lending Works has explained that the Shield would have been fully depleted during the Covid-19 pandemic had it not made the changes, it's more than likely that, in this scenario, he wouldn't have been able to achieve the 6% target interest rate.

Turning to Lending Works' offer, I've thought carefully about whether the offer is fair. And having weighed up everything, I think the offer is fair and reasonable in all the circumstances. I'll explain why.

Lending Works offer is essentially to put Mr P back in the position had the negative interest changes not applied to his account. Lending Works has used the following calculation to determine its offer

- Mr P's account balance was £76,701.89 on 31 December 2019.
- Between 31 December 2019 and 28 February 2022 (last month of negative interest) he withdrew £58,178.46.
- £76,701.89 minus the £58,178.46 withdrawn leaves £18,523.43.
- Mr P's account balance as of 28 February 2022 was £17,778.16
- During the period negative interest was applied to his account (April 2020 to February 2022) his account balance reduced from £18,523.43 to £17,778.16.
- Therefore, his loss during the negative interest period was £745.27.

Whilst I appreciate Mr P believes he has had more than this deducted from his account, I think the offer fairly compensates him for any loss he's incurred because of negative interest being applied to his account. I understand Mr P also didn't earn as much interest as he anticipated during the period where Lending Works reduced interest to "top-up" the Shield. However, as I've explained above, I'm persuaded that on balance he would have been in a worse position had Lending Works not taken this action. While it's impossible to precisely recreate what his investments would have achieved and when the Shield would have paid out, I've considered that it's possible that the level of defaults on his loans would have left him worse off than he now is. And certainly worse than the position Lending Works' offer seeks to put him in.

Taking all that into account, I'm satisfied Lending Work's offer is fair and reasonable given everything that's happened. Overall, I do think Lending Works' offer strikes a balance between Mr P not being exposed to the negative interest changes, whilst allowing him to benefit from some interest during a time of economic uncertainty.

I also think the offer of £500 does fairly take into account the any distress, upset and worry caused to Mr P. As he had a substantial amount of money invested on the platform and I appreciate the impact of the negative interest would have had on him.

Putting things right

I think Lending Works offer is fair and so I instruct it to do the following, if it hasn't already:

- Pay Mr P £745.27.
- Pay Mr P £500 in compensation for the distress and inconvenience caused.

My final decision

My final decision is that Lending Work Limited's offer is fair and reasonable in all the circumstances and it should compensate Mr P in line with this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 November 2023.

Ben Waites
Ombudsman