

The complaint

Mr L complains rebuilding society.com Ltd (RBSL) provided misleading information about returns on his peer-to-peer (P2P) lending investments. He is also unhappy with actions it has taken to recover funds from defaulted loans.

What happened

Mr L deposited a total of just under £130,000 into his Self-Invested Personal Pension ("SIPP") account and standard account with RBSL in 2015. In April 2017, Mr L began to de-invest from the platform.

Mr L complained to RBSL on 28 May 2023 as he had several concerns with the platform. RBSL considered Mr L's complaint but didn't uphold it. Mr L remained unhappy with RBSL's response and so he referred his complaint to this service for an independent review.

In December 2023, an ombudsman issued a decision on our jurisdiction to consider the complaint. He found some of the complaint had been referred too late, but we could consider some aspects. In summary he said:

- Mr L's complaint points about misleading information on the returns of his investment had been outside of the time limits that apply. So we would not be considering the merits of this complaint point.
- We could consider the complaint points Mr L has raised about recovery action on defaulted loans in relation to activity that occurred within six years of when Mr L complained. So we can consider Mr L's concerns regarding any recovery action taken since 28 May 2017 (six years prior to Mr L complaining) only.

In November 2024, I issued a provisional decision on the merits of the complaint in relation to the complaint issues that had been made in time. This is what I said:

"My considerations of this complaint relate to the complaint Mr L made about the recovery actions RBSL has undertaken and the updates around this on his active loans in default. As set out in the decision issued by the ombudsman on our jurisdiction, this includes the events that did (or didn't) happen within six years of Mr L raising his complaint.

P2P lending of this type involves RBSL acting on behalf of lenders and borrowers to ensure the relevant loan payments are received. Where loans have security included a security trustee is appointed to act on behalf of lenders – including in situations where there are payment problems leading to a default. In simple terms, lenders like Mr L appoint RBSL to act as their agent in relation to the loans they invest in – which includes any recovery action that is required when payment problems occur. Not every loan performs exactly as expected, so it's not uncommon for RBSL to have to carry out action on behalf of lenders when loans default.

Mr L doesn't feel RBSL has met its regulatory obligations. 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."

RBSL 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."

In making his original complaint, Mr L has made general concerns about how RBSL has handled recovery action on his portfolio as he has incurred a number of defaulted loans for which he hasn't received any returns for a number of years. He has also expressed unhappiness with how he was kept updated on the position of his loans.

RBSL has stated it has been undertaking recovery action on Mr L's behalf – and to support this it has included examples of where its actions have had a successful outcome for Mr L and he has had capital and interest.

But Mr L's concerns relate to the situations where he hasn't had funds returned and/or he hasn't received updates to understand what is going on with his remaining active loans that are in default. Mr L says he hasn't received a single repayment in the last six months and most have not made any repayments in several years. He also says there has been a lack of meaningful loan updates and based on this he can only assume that no recovery activity is taking place. In his original complaint he made reference to three loans in particular. So, I've focused my findings on these loans.

For Loan S, this loan has been in default since 2015, and Mr L says the last payment he received from this loan was in June 2015 with no updates since March 2020.

RBSL has sent us the updates it provided - the last three are dated February 2021, August 2023 and February 2024. From reviewing the updates, I can see when the loan first defaulted regular updates were provided explaining the recovery action taking place but these seem to largely stop in 2020, apart from the updates referred to above. The updates indicate legal challenges have made it difficult for the recovery to complete and there were complexities caused by the impact of the pandemic. The June 2023 complaint final response letter (the FRL) also provided an update to say a charge on a property was being pursued, and while the process had been slow RBSL expected the property to be successfully sold with a recovery to lenders over the next 12-18 months. And it anticipated that lenders are likely to receive all capital and some interest back on this recovery. The most recent update I've seen from February 2024 indicates a realistic offer had been received on the property and progress was being made. I haven't seen anything to indicate whether further progress has been made since then.

For Loan P, this loan has also been in default for several years, and Mr L says the last payment he received from this loan was several years ago, with no updates since February 2022.

RBSL has sent us the updates it provided on this loan. The February 2022 update Mr L has referred to as the last, was the most recent on for quite a while, but it has also now sent a

January 2024 update. When the loan first defaulted regular updates were provided explaining the recovery action. The updates provided by RBSL indicate a breakdown with the borrower and difficulties pursuing the guarantors for repayment on the loan. The updates also indicate complexities with pursuing a second charge on the guarantor's property. There have been limited updates in recent years, as the situation remains unresolved. The June 2023 FRL provided an update that explained a repayment plan is in place but the recovery costs have taken up all the repayments. But a small capital distribution to lenders is likely in late 2024 / 2025. The January 2024 update confirms payments are up to date under the settlement agreement but there still hadn't been enough to make a distribution to lenders. It also said there was an expected final bullet payment in October of this year, which if made should enable a distribution to lenders. I haven't seen any further update to see if this payment occurred.

For Loan L, this loan has also been in default for several years, and Mr L says the last payment he received from this loan was in August 2015, with no updates since March 2020.

RBSL has sent us the updates it provided. The March 2020 update was the last, but it has now also now sent a January 2024 update. When the loan first defaulted regular updates were provided explaining the recovery actions taking place but these seemed to stop in 2020. It is apparent from the updates given by RBSL that protracted negotiations with the guarantor for the loan resulted in delays and subsequent insolvency action. After March 2020 the updates stopped. RBSL did provide an update in the June 2023 FRL which explained the recovery processes are active and progressing through its solicitors, but there are complications relating to bankruptcy hearings that are impacting the speed and level of success. The January 2024 update indicates there have been further issues pursuing the guarantor and further insolvency action was needed. It is unclear from the evidence I've seen if further progress has been made since then.

From the evidence I've seen through the updates that were provided, and the position RBSL set out in the FRL, I'm satisfied recovery action was taking place. But the process for all three loans has been slow and difficulties in recovery have meant little or nothing has been returned to Mr L yet. RBSL has suggested it still hopes to make recoveries, particularly for Loan S. The nature of recovery debts from unsecured loans can be difficult and involve many challenges where the borrower or guarantors are unable to meet repayments. This can lead to protracted legal processes through the insolvency action.

I have seen that RBSL was taking action to support lenders' interests. The insolvency action it has pursued on the loans does support that it was protecting lenders' interests. The fact this hasn't been successful yet, doesn't mean it has failed in its obligations. The nature of P2P lending means there is always a risk of capital loss and non-payment of interest. From reviewing the updates and from the information provided, it is clear that issues with the borrowers and guarantors has largely been the reason why payments haven't been made. RBSL's latest updates indicate that it is still pursuing matters - but ultimately it is still not clear if it will be successful in returning funds to Mr L.

With regards to the updates provided to Mr L, these haven't been regular, particularly in more recent years. Since 2020, for all three loans, there were significant periods where Mr L had no understanding of what was happening. It is clear Mr L knew for many years that there were problems with recovering funds, but the lack of updates meant he was left in the dark, with little understanding of what has happened and if he was likely to get anything back. So, I think RBSL has failed here. This has caused Mr L frustration, and he has explained that it has put him to a lot of effort to gain an understanding of the position of his investments.

I've considered whether Mr L has suffered a financial loss as a result of RBSL's failure to provide timely updates. While I can understand the frustration of not receiving updates, I don't think receiving clear and more regular updates would have resulted in Mr L receiving repayments sooner. The information available about the reason for recovery action not being successful, doesn't suggest better communications to Mr L would have prevented him from suffering the losses he is facing now. As the recovery action is still ongoing, it isn't possible to quantify what losses Mr L may suffer. This will only be known when the recovery action either proves successful, or the loans are written off as bad debt.

Mr L has referred to a lender vote on another defaulted loan (Loan H), where he says he has suffered a loss as a result of RBSL's recovery actions. He says as part of the recovery action, RBSL asked lenders to vote on a repayment proposal in July 2016. He says RBSL indicated, if agreed by lenders, the return would be approximately 40%. But after the proposal was voted in and implemented lenders only received 13% when distributions were made in December 2016. He says this is a loss caused by RBSL providing misleading information.

I'm unable to consider this point. As set out by the previous ombudsman in the jurisdiction decision, I'm unable to consider events that happened more than six years before Mr L made his complaint. The events Mr L is complaining about here happened outside of this time limits as he complaint more than six years after the event, and he was aware of his cause for complaint when he received the lower-than-expected distribution in December 2016, so this wouldn't extend the time under the three-year part of the rules.

In summary, the nature of investing in P2P loans does present a risk to lenders that borrowers' default and a risk of losses where recovery action isn't able to return all capital and interest due. I'm not persuaded that there is sufficient evidence to say there were failings by RBSL that contributed to the problems in the recovery process. But I accept that it failed to keep Mr L properly updated and this did cause him distress and inconvenience. I intend to require RBSL to pay Mr L compensation for the impact of its failings. I propose it pays Mr L £250 in compensation. I also direct RBSL to provide the up-to-date position on Mr L's remaining open loans."

Neither Mr L nor RBSL responded to provide any further submissions for me to consider.

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.

As neither party has provided further evidence or arguments in response to my provisional findings, I've got no reason to change the outcome I set out above.

In conclusion, I'm not persuaded that there is sufficient evidence to say there were failings by RBSL that contributed to the problems in the recovery process on the P2P loans Mr L is invested in. But I accept that it failed to keep Mr L properly updated and this did cause him distress and inconvenience.

I require RBSL to pay Mr L compensation for the impact of its failings. I direct it to pay Mr L £250 in compensation. I also direct RBSL to provide Mr L with the up-to-date position on his remaining open loans.

My final decision

I uphold this complaint in part and direct rebuildingssociety.com Ltd to pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 January 2025.

Daniel Little
Ombudsman