

## The complaint

Mrs T complains about the way Funding Circle Ltd has handled recovery action in respect of loans she held in two peer-to-peer (P2P) lending accounts. She says the decisions made by Funding Circle Ltd have resulted in her losing out.

## What happened

Mrs T holds two P2P lending accounts on Funding Circle's platform. She invests money in loans in return for interest. Where a borrower fails to meet interest payments and return capital, loans may be defaulted. When this happens Funding Circle, on behalf of investors, seeks to recover the funds.

On 1 June 2021 and 2 February 2022, as part of recovery actions, Funding Circle conducted loan sales in which some of Mrs T's defaulted loans were sold to third parties. Mrs T was unhappy because some of these loans had arrangements in place to repay, which she felt were being serviced in a satisfactory manner. She said the loans in question were sold at a value far below that which would have been recovered had they been retained and allowed to continue gradual repayment. She raised a complaint with Funding Circle as she felt she had lost out due to Funding Circle's actions.

Funding Circle responded to the complaint. In summary it said:

- As the sold loans were already in default, there was no guarantee of repayment in full, or in part, and there was a significant risk of non-recovery for defaulted loans.
- The sale price achieved for these loans was the result of a competitive auction process to obtain the best and fair price and represents a return on a portfolio level that is at least the same on a pound for pound basis that Funding Circle would otherwise expect to recover, relative to its historic recoveries for loans in similar cohorts and with similar profiles.
- The Investor Terms and Conditions expressly provide for the sale of defaulted loans, provided Funding Circle acts in a "fair and equitable manner to achieve maximum recovery for all affected Investors".

Mrs T didn't accept the conclusions reached, so referred her complaint to this service for an independent review. One of our investigator's looked into the complaint. He didn't think it should be upheld. In summary he said:

- With reference to the terms and conditions, Funding Circle was able to sell Mrs T's loans to a third party.
- Recovery on any loan is never guaranteed, and the recovery proceeds may not be sufficient to pay back the full capital.
- Funding Circle has explained that the action taken delivered recovery immediately and avoided the risk of future recovery not performing in line with expectations. It also explained that the amount returned from the sale was in line with its internal valuation and expected lifetime recovery rates.
- Funding Circle has demonstrated it acted in Mrs T's best interests by achieving a fair price by way of a competitive auction process.

Mrs T didn't agree with the investigator's findings and requested her complaint be referred to an ombudsman for a decision. In summary she said:

- She accepts and doesn't dispute the risk of default and non-recovery with P2P lending. And she accepts Funding Circle is entitled to sell defaulted loans to a third party if that is the best available course of action.
- The speed of the recovery wasn't of concern to her while repayments were being made – she said an immediate payment was detrimental to her when this has been hugely discounted to obtain immediate liquidity of which she had no need.
- There are examples of loans that had been receiving recovery payments. While it is impossible to know future performance, she doesn't see reason why this wouldn't have continued based on the evidence of promising ongoing recoveries on the loans in question. There are also examples where Funding Circle gave explicit indications that recoveries would continue
- No quantitative criterion has been applied, as long as Funding Circle had followed due process and obtained an outcome "in line with their internal valuation and expected lifetime recovery rates", it could have sold her loans for one per cent or less of their face value without the conclusion necessarily being that this was not in her best interests.

### **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.

Firstly, I acknowledge that Mrs T has confirmed that she understands there is a risk of losses with P2P lending. So she isn't claiming that all funds need to be recovered. Having reviewed Funding Circle's investor terms, I'm satisfied it covers the situation that it is able to take decisions regarding recovery actions on behalf of lenders – including the sale of loans, provided it acts in a "fair and equitable manner to achieve maximum recovery for all affected Investors". And Mrs T also accepts Funding Circle is entitled to sell defaulted loans to a third party if that is the best available course of action

The nature of the relationship between Mrs T as an investor on the platform, and Funding Circle, means it has discretion in the recovery action it takes in order to return funds to lenders. But it isn't obliged to take a certain route based on the preference of individual lenders. So, to reach a finding that Funding Circle has caused a loss, I would need to be persuaded that there was evidence that it had acted in a way that wasn't in Mrs T's best interests.

Funding Circle has set out the process it went through before deciding to sell the defaulted loans. It obtained legal advice considering the risks of the sale of debt before making the decision to go ahead. A copy of this advice has been provided in confidence to this service. We are able to accept evidence in confidence where we agree it is commercially sensitive. From my review of the advice, it indicates the loans were sold as part of a portfolio sale of non-performing loans to an external party rather than as part of individual loan sales. Overall, the advice agreed with Funding Circle's approach to valuing the portfolio. So, I'm satisfied Funding Circle did seek to taken into account lenders interest when valuing the defaulted loans before agreeing a price to sell them at.

I acknowledge Mrs T has referred to specific loans that she understood to have a history of receiving repayments and Funding Circle had suggested it expected to achieve ongoing recovery. But as the loans sales were negotiated on a portfolio basis, I'm satisfied the performance of all loans would have been taken into account as part of the overall value achieved.

I also acknowledge Mrs T's comments that a swift resolution to the recovery action wasn't a priority for her. But there's still uncertainty on whether this would have led to a greater recovery overall. I'm also conscious that Funding Circle make decisions on behalf of all lenders, not based on individual preference. While Mrs T believes alternative action and a longer recovery period would have led to reduced losses, I think providing certainty and a faster recovery is still a factor in supporting Funding Circle was considering lenders best interests.

In summary, I understand why Mrs T was in favour of allowing the loans to continue in the hope payments would reduce her losses, but the fact Funding Circle took a different decision doesn't mean it failed to act in her best interests. I don't find that Funding Circle is responsible for the losses Mrs T claims. I've found that it did act in and a fair and reasonable way when fulfilling its obligations to Mrs T under the lender terms she agreed to when she invested on the platform.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 21 March 2024.

Daniel Little  
**Ombudsman**