

The complaint

A company, which I'll refer to as P, complains that it was mis-sold a £75,000 loan (the Loan) by Funding Circle Ltd (Funding Circle). In particular, P says that in initial discussions about the Loan, Funding Circle failed accurately to represent the true cost.

In bringing this complaint, P is represented by its director who I'll refer to as Mr W.

What happened

The background to this case is well known to the parties so, I won't repeat it in detail.

Briefly:

- In light of its recent expansion, on 11 January 2024, on behalf of P, Mr W contacted Funding Circle about applying for the Loan to help with P's cash flow.
- The Funding Circle employee to whom Mr W spoke explained that he needed to apply online and Mr W did so. However, in the course of the application, Mr W had further phone conversations with other Funding Circle employees about the rate of interest the Loan would attract.
- On 19 January Funding Circle called Mr W to confirm the application had reached the second stage in the application process. Together, they discussed the quotes Funding Circle had prepared. Later that day, as requested by Mr W, Funding Circle confirmed the quotes by email as follows:

"As discussed, we are in the final stages of our underwriting process and nearing a decision. If we are able to make an offer it would likely be as follows;

Quote 1

You will borrow £80,175 over 48 months equating to monthly repayments of £2,070 based on our average interest rate of 10.90% . The arrangement fee on the loan is £5,175.00 netting a total release of £75,000.00 into your account

Quote 2

You will borrow £80,175 over 24 months equating to monthly repayments of £3,700 based on our average interest rate of 9.90% . The arrangement fee on the loan is £5,175.00 netting a total release of £75,000.00 into your account"

- On 24 January, Funding Circle send P an offer mirroring Quote 1 above. And Mr W was reminded of the online steps required to accept the offer.
- Funding Circle later called Mr W to confirm receipt of their offer and to determine how he wished to proceed. But Mr W explained he was unhappy about the offer because,

he said that in his initial discussions with Funding Circle about the Loan, they failed to inform him about the £5,175.00 fee. He said that according to his calculations the effect of the added fee was that P would end up paying an overall 16% interest rate for the Loan. He confirmed he did not intend proceeding with it and instead, wished to raise a complaint on behalf of P to the effect that the Loan had been mis-sold.

- Mr W further explained that he'd wasted two days applying for the Loan which included time spent providing information Funding Circle had asked him for. So, he requested compensation from Funding Circle for those two days.
- Funding Circle didn't think they'd done anything wrong. They referred to their e-mail to Mr W dated 19 January 2024 giving him indicative quotes which also included their fee.
- P didn't accept Funding Circle's response to its complaint and as it remained unresolved, Mr W referred the complaint to this service to look into.
- Our investigator didn't uphold P's complaint. She said that in order for her to do so she would need to be satisfied that Funding Circle had made an error. But she didn't believe they did. In particular, she said – in summary:
 - P's application was done online, and a loan calculator tool was available there to help Mr W assess affordability, indicative rates of interest on the Loan as well as the fees Funding Circle would charge for it.
 - The loan calculator would have shown the £5,175 fee when Mr W included details of the Loan when he applied for it.
 - Moreover, in phone calls between Mr W and Funding Circle on 11 January 2024, discussions were focused on the interest rate the Loan would attract – specifically whether this would be 6.9% or a greater amount. Funding Circle confirmed it could be greater as borne out by the 19 January quote and 24 January offer. There were no discussions as to whether there would be a fee for the Loan.
- P didn't agree with the investigator's conclusions and asked for an ombudsman to review the complaint.
- Whilst Mr W acknowledged the application for the Loan took place online, he said - in summary that he was confused when navigating the application process. For that reason therefore, he called Funding Circle to discuss things. He did not know P would have to pay a fee on top of the Loan and Funding Circle didn't tell him that would be the case.

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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

There are two main issues that Mr W is unhappy about, and these are at the heart of P's complaint:

1. The rate of interest Funding Circle proposed charging on the Loan; and
2. The £5,175 arrangement fee they also proposed adding to it.

It is P's case that both impacted the true cost of the Loan whereas Funding Circle failed to make them clear, if at all. It is on that basis on P's behalf, Mr W argues that the Loan was mis-sold to P.

The proposed rate of interest on the Loan

I generally take the view that where a customer asks a financial business for information to help them make an informed decision, the financial business should give clear and accurate information.

In relation to P's application for the Loan, I note that at the start, Mr W was keen to establish the rate of interest it was likely to attract. To that end, I note that on 11 January 2024 he had three conversations with Funding Circle, two of which focussed almost exclusively on that issue. I've listened to all three phone calls but paying particular attention to the two phone calls in which interest rates were discussed at length.

In summary, in the first call Mr W mentioned the amount P proposed borrowing – which was £75,000 over 36 or 48 months. In response to the interest rate query, Funding Circle's employee explained that the lowest rate on offer was 6.9%. But she cautioned that the rate for P's actual borrowing could be higher.

Although Mr W did seem somewhat frustrated at various points in the call, I am satisfied that by the end he had a clear understanding of the rates generally available. In particular since he confirmed his understanding that the 6.9% rate was the lowest on offer and not a guarantee of the rate that P's actual loan might attract.

Mr W rang Funding Circle again and once more he discussed P's proposed borrowing with a second employee. In that conversation also he raised the issue of the rate of interest available, including the 6.9% rate that was mentioned in his first conversation.

The second employee also confirmed the 6.9% rate was the lowest rate available. And he too warned Mr W that this rate could increase. He mentioned that he'd noticed Mr W had begun the application process and he assured him that as soon as the application cleared Funding Circle's credit search system, a more precise rate could be provided to him.

So, after listening to the two calls particularly, I am satisfied the information regarding the rate of interest P could expect to be charged was clear and unambiguous with appropriate caution given to Mr W that 6.9% was not guaranteed. In other words, Mr W was made aware 6.9% was Funding Circle's lowest rate and that on a proposed borrowing of £75,000, that rate could not be guaranteed.

More to the point, I am satisfied Mr W was told that only on the submission of P's application and following the clearance of Funding Circle's credit search process could it then be determined the actual rate Funding Circle would be able to offer. Moreover, I'm

satisfied Mr W understood that to be the position. It follows, therefore, that I do not find that Funding Circle mis-advised P about the rate of interest they were willing to offer it on its proposed £75,000 borrowing.

The £5,175 loan arrangement fee

The particular concern Mr W has in this regard is that he spent two days on the application during which time Funding Circle omitted any mention of this fee. He said it was only after having gone through the application process, he learned about the fee and so Funding Circle should pay him compensation for the time he wasted.

By way of context, it's worth mentioning that in circumstances where a complainant that's a limited company (as P is) complains to us about an alleged error by a financial business and we find in its favour, we wouldn't generally award compensation based upon, for example the daily rate of its director.

That being said, we recognise nonetheless that there may be circumstances where, as a result of something a financial business did wrong, the director of the company might be unable to properly conduct the company's affairs. And we recognise too, that in such situations the company can, by extension be inconvenienced.

However, like the investigator, for me to require Funding Circle to compensate P for any alleged inconvenience, I'd need to find they had made an error or acted unreasonably – and I don't think they did. I'll explain why.

To begin with, I agree with Mr W that in the discussions that took place on 11 January 2024 when he was in the process of submitting P's loan application, there was no mention of Funding Circle's fee.

But the principle I alluded to above regarding a financial business' obligations when it comes to enquiries directed towards them applies equally here too. That is to say they must provide accurate information in response to requests from their customers.

Mr W did not ask Funding Circle for any information in connection with their loan arrangement fee. In his early discussions with Funding Circle, the nature of Mr W's queries was in connection with interest rates on the Loan. And Funding Circle responded accurately to him regarding their rates.

It would appear that it was not until 19 January 2024, when Funding Circle rang to say the application had reached the underwriting stage in the process - meaning it was now possible to discuss quotes for the Loan, that the arrangement fee was mentioned.

But having also listened to that conversation, Mr W did not appear surprised when the £5,175 figure was mentioned as it was specifically. The employee later confirmed the figures discussed in the email referred to above dated 19 January 2024. Mr W raised no queries at this point either.

I've thought about whether Funding Circle should have volunteered the information in any event. But I don't think I can reasonably conclude that failing to do so was unreasonable or amounted to poor service. I say that because I note Mr W applied for the Loan on-line. In my opinion he ought reasonably to have seen this notification on Funding Circle's website:

"All our loans are fixed rate, so you'll know exactly what's due each month. Rates start from 6.9% per year, we charge a simple one-off fee when you take out your loan..."

But more to the point, in 2022, P had taken out another loan with Funding Circle for which it was charged an arrangement fee of £2,794.54. So, it doesn't seem to me unreasonable that Mr W ought to have been aware there would be such a fee for the Loan. And as I noted earlier, when this fee was mentioned in the conversation with him on 19 January, and later confirmed in writing, he expressed no surprise or asked for an explanation as to why Funding Circle proposed charging it.

My final decision

For the reasons explained above, my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 5 August 2024.

Asher Gordon
Ombudsman