

## The complaint

Mr H complains about the way Funding Circle Limited (Funding Circle) dealt with the recovery of a business loan for which he gave a personal guarantee.

## What happened

There's little dispute between the parties about the core events in this case. As I understand them, they are as follows.

- Mr H was formerly the sole director of a company which I'll refer to as B.
- In 2019, through Funding Circle, B took out a £75,000 business loan (the Loan) to help fund its expansion. Mr H gave a personal guarantee for the Loan.
- In February 2022, unfortunately, B entered into administration owing £42,000 on the Loan.
- In November 2022 the Loan defaulted. And as guarantor, Mr H and Funding Circle began discussions about its repayment.
- Discussions were paused due to Mr H's illness, but in October 2023 following Mr H's completion of an up-to-date income and expenditure form, Mr H told Funding Circle he'd be able to make monthly repayments of £400 towards clearing the outstanding balance on the Loan.
- Funding Circle told Mr H that they'd be willing to accept his proposal provided he also granted them a legal charge on his home.
- Mr H was unwilling to agree to Funding Circle's counter proposal. So, Funding Circle told him they would be open to a full and final settlement offer from Mr H, provided his proposal reached them by 11 December 2023.
- However, a week before Funding Circle's 11 December 2023 deadline, the debt was sold and transferred to a third party company, which I'll refer to as R. The amount transferred to R was £58,000.

Among other things, Mr H was unhappy about the sale of the debt. Especially because it happened before he'd been able to put a revised payment proposals to Funding Circle as he'd been invited to do. So, Mr H complained to Funding Circle saying:

- The sale of the debt to R removed all possibility of any compromise, and furthermore he was given no notice about the sale.

- They could have agreed a compromise and he'd have been prepared to give them a charge on his property in spite of his initial reluctance.
- They failed to do proper checks to ensure whether he could have afforded to repay the Loan under his personal guarantee. Especially, bearing in mind his income was derived solely from the running of B
- The debt transferred to R in 2023 seemed excessive given the amount B had already paid since 2019.

Funding Circle didn't think they'd done anything wrong. In response to the complaint, they said – in summary:

- The Loan was granted to B for business purposes. It wasn't a personal loan – meaning the assessment of Mr H's personal affordability was limited to determining his suitability as a personal guarantor. And at the time the Loan was granted, Mr H's credit report was sufficiently good that Funding Circle were satisfied Mr H could be a personal guarantor for the Loan.
- In any event the decision to sell and transfer the Loan was taken by the investor who'd lent the money to B. They decided to transfer all the loans they held to a third party – R, as part of a larger debt sale. And in any case, like Funding Circle, R is regulated by the Financial Conduct Authority (FCA) and as such, is obliged to observe all relevant principles laid down by the FCA and others regarding fair treatment of customers.
- There wasn't anything untoward in the loan balance Mr H was required to repay because:
  - At the time the Loan was provided in June 2019, the principal, including interest was £81,750.00. Also, had the repayment schedule agreed at the time been followed the total repayable ultimately, would have been £129,679.80.
  - During the term of the Loan to date, B made repayments totalling £77,807.88.
  - The total balance at the point of the debt sale was £52,958.84, made up of the following -
    - Principal - £37,254.91
    - Interest - £11,452.96
    - Collection Charge - £4,250.97

As Mr H's complaint remained unresolved, he referred it to this service to look into.

Our investigator did so but he concluded Funding Circle hadn't done anything wrong. He said – in summary:

- Clause 14.1 of Mr H's personal guarantee permitted the transfer of Mr H's outstanding debt to a third party because it said:

*“14.1 The Guarantor hereby acknowledges and agrees that the Loan Servicer and/or any of the Lenders (as the case may be) may freely transfer, assign or novate, or otherwise allow any person to take over any of its rights and duties under this guarantee (including without limitation to Funding Circle Trustee*

*Limited or Funding Circle Property Finance Limited) without giving notice to the Guarantor. The Guarantor authorises the Loan Servicer to give that person or its agent any financial or other information about the Guarantor”.*

- Funding Circle did give Mr H, 11 December 2023 to come up with his repayment proposal, and the sale and transfer did take place before then. Nonetheless, even if that didn't occur, he wasn't persuaded that ultimately Mr H's position would have been any different. That was on the basis of Mr H's indication that his offer to Funding Circle was likely to be around £12,500, repayable on a repayment plan.
- He noted Mr H's submission that if that was unacceptable to Funding Circle and they'd insisted on a lumpsum payment instead, he'd have gone to family members to lend him the amount needed. But on balance he didn't think it likely Mr H's offer would have been accepted, and not least because as Mr H acknowledged he didn't have the money firmly available.
- Based on the evidence he'd seen, the debt that was transferred to R was in line with the terms of the loan agreement. He said he noted the balance transferred was made up of the outstanding principal balance, and interest applied, which included interest for late or missed payments. In addition to this there was also a collections charge, which the lender was able to apply in line with the terms of the Loan.
- The personal guarantee document outlined Mr H's liabilities and suggested he takes legal advice before agreeing to it. And so, when it came to any requirement to make payments under the guarantee, it's not unreasonable to have expected Mr H to raise with Funding Circle any concerns he may have had regarding his ability to repay the Loan if the guarantee was called upon.
- Overall in the circumstances of this case, and bearing in mind what is good industry practice when it comes to the treatment of customers experiencing financial difficulties, Funding Circle did not treat Mr H unfairly. They showed forbearance by stating that they would accept a repayment plan of £400 a month if a charge against his property was agreed.

Mr H didn't accept the investigator's conclusions and has asked for an ombudsman to consider the matter.

In further submissions to our service, Mr H has maintained his position that it was unreasonable that Funding Circle did not allow him the opportunity to progress their final settlement discussion to a conclusion before the debt was sold to R. He also said:

- Initially he'd offered Funding Circle, repayments of £400 per month whilst declining the charge on his home. He'd likely have suggested a settlement figure in the order of £12.5k, albeit, as is the nature of negotiations, he accepts that may not have been a realistic figure.
- He had come around to possibly giving Funding Circle a charge on his home. And ultimately, with further negotiation they might have settled on a figure of around £25,000 which he'd have probably been able to borrow from close relatives
- Funding Circle will have sold the debt to R at a very significant discount which should have been offered to him.

- Whilst our service may only look at contractual obligations of the parties, his case is such that it needs to be considered beyond the constraints of his personal guarantee obligations

### **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

I start by saying I've considerable sympathy for the circumstances Mr H has found himself in. I'm sorry to learn that owing to the covid pandemic, B had to be put into administration. And this was followed by a period of ill health. I can see how strongly he feels about his complaint and assure him I've considered all his points very carefully.

But without meaning any discourtesy, I would add that whilst Mr H has made a number of points in support of his case, I won't be addressing all of them individually. That is because in keeping with our role as an informal resolution service and as our rules allow me to do, I will focus on the issues I find to be material to the fair outcome of this complaint - including, but not limited to Mr H's guarantee obligations.

However, where I've omitted to comment on any specific point, it's not because I haven't considered it – I assure Mr H that I have. The reason I haven't commented is because I don't think I need to in order to reach what I think is the fair and reasonable outcome in his case.

And looking at Mr H's case overall, I am satisfied that the main issue is that he does not think Funding Circle have treated him fairly in connection with their demand for him to repay the balance outstanding on the Loan. In particular, the curtailment of his ability to negotiate a settlement with them.

#### *Sale and transfer of the Loan to R*

It is Funding Circle's case that the decision to sell and transfer the Loan was taken by the investor who lent funds to B. So, this decision was taken independently of the engagement Funding Circle were conducting with Mr H at the time.

They added also that this was part of a debt sale that took place whereby all the loans that were held by the investor were transferred to the third party – R.

I appreciate Mr H has speculated the debt was sold at a discount. I have no way of knowing whether that was the case. And I cannot therefore comment about that.

That being said, more broadly, I have no reason to doubt Funding Circle's evidence regarding the nature of the sale and transfer of Mr H's debt. In other words, the sale and the transfer themselves were not a decision that Funding Circle made. In particular because as Mr H already knows, it is an online lending platform that connects small businesses looking to borrow with investors who want to lend. And the Loan agreement does provide investors with individual rights that can be exercised independently of Funding Circle. Furthermore, as the investigator pointed out, under clause 14 of the terms and conditions of Mr H's personal guarantee, a transfer of the rights and duties under the guarantee was permissible. So,

having now assumed those rights R is entitled to look to Mr H to settle the outstanding balance of his debt.

I understand and appreciate it must have come as an unpleasant shock for Mr H to discover that what he'd expected to happen by 11 December 2023 based on his discussions with Funding Circle was curtailed prematurely by the sale and transfer to R.

But I can't be sure Mr H's proposal would have been successful in any event. And on balance my belief is that it was likely not to be. I say that for the following reasons.

Mr H has told us he'd have suggested a low settlement figure of £12,000 - £12,500 as an opening to negotiations which might ultimately have ended up at £25,000. But as he candidly acknowledged he had no lump sum at his disposal that he would be able to offer Funding Circle.

Moreover, I've listened to the conversations Mr H had with Funding Circle before he was invited to go away and consider a further proposal. Funding Circle made clear in one of their discussions with Mr H that whilst they could not advise him about the actual figure to come up with, he needed to be mindful of the principal sum outstanding. They mentioned that a settlement amount in the region of £40,000, supported by a charge on Mr H's house ought to figure in his thinking.

That suggests to me that in all likelihood, unless Mr H had access to funds approaching the suggested amount, which he said he did not, and was prepared to ignore the legal advice he told Funding Circle he'd receive which was not to give them a charge on his house, it seems Funding Circle were unlikely to accept a proposal that fell short of their expectation. Regardless of Mr H's optimism that he'd have been able to strike a deal.

#### *Concerns about the outstanding loan amount.*

I'm aware of Mr H's concern about this. And I've looked carefully at the breakdown above. They don't seem to me to be unreasonable. Moreover, I'm aware Funding Circle have provided Mr H with a spreadsheet documenting his payments as proof he owes the amount confirmed to him. I've seen no evidence from Mr H challenging the figures.

#### *The way forward*

Mr H's debt is now with R. And I thank Mr H for his update regarding the up to date position. He has confirmed that R's lawyers have been in contact offering a discount on the amount he now has to pay. I'm pleased about that.

He has also told us that the lawyers are intending to contact Funding Circle who he believes has some influence on the final figure. Mr H has asked whether there is anything this service might be able to do in the current circumstances.

I am sorry but there isn't, save to say I would urge Mr H to engage with R to try and find a mutually agreed settlement. And it is worth reminding him that I note in his settlement discussions with Funding Circle, they expressed a willingness to consider forgoing the collection charge they'd levied, and which is included in his figures. My understanding is that Funding Circle were also open to discussing with R the possibility of writing off that amount. So, Mr H might consider it worthwhile exploring this further with R.

### **My final decision**

For the reasons I've explained above and whilst anticipating this will come as disappointing news to Mr H, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 January 2025.

Asher Gordon  
**Ombudsman**