

## **The complaint**

Mrs W complains about the way Crowdstacker Limited has administered the funds she invested in a loan on its peer-to-peer (P2P) lending platform. She says the actions taken by Crowdstacker have prevented her from recovering the capital she invested.

## **What happened**

In 2016, Mrs W invested £15,240 in a loan promoted on Crowdstacker's P2P platform. It was a 36-month investment, with quarterly interest due to be paid and capital returned at the end of the term.

In and around 2018, the company Mrs W funds were lent to ("the borrower") encountered financial issues and on 20 December 2018, the directors appointed administrators. Due to this there was a delay in Mrs W's capital being repaid at the end of the loan term. There were further delays until Crowdstacker provided an update in February 2021 confirming there would be shortfall in the returns.

In May 2021, the administrators proposed a restructuring plan (RP) to exit administration. In its role as security trustee, Crowdstacker opposed this but the court ruling went against it – and a court approved the plan in August 2021. A £75,000 distribution was made for lenders, but Crowdstacker said this was fully utilised paying for the legal costs incurred in contesting the RP.

In January 2022, Mrs W contacted this service to raise a complaint. Mrs W was unhappy with the actions that Crowdstacker took in its role as security trustee to return the capital she invested. The complaint was passed on to Crowdstacker in the first instance to provide a response to Mrs W. It didn't uphold the complaint. In summary it said the borrower is responsible for managing their own business, making business decisions and making loan repayments to investors. It also said there is always risk of a borrowing business failing to pay interest or repay capital. These risks were explained to ensure investors understand the risk they are taking. So, it didn't accept it was responsible for the losses Mrs W faces.

As no agreement could be reached, one of our investigators looked into the complaint. He didn't uphold it. In summary he said:

- He was satisfied Crowdstacker provided clear information about the security that was provided for the loan. He found the risk of the borrower becoming insolvent was explained – and that there was a risk to interest payments and capital not being repaid in full.
- The defaulting of the loan during the administration process, along with other costs incurred, meant that returns were affected for Crowdstacker investors – but he didn't think the losses were caused by anything other than the accepted risk of P2P lending.
- Updates were provided by Crowdstacker during the administration process. Whilst there were inconsistent messages from update to update – he found that this was due to actions of the administrator and not due to Crowdstacker. Once administrators are appointed, it is for them to make decisions on how best to wind down the

company in question. The administration process is often long and complicated, especially where there are many different parties involved.

- He didn't think that Crowdstacker acted unfairly by deducting recovered funds to apply towards its legal costs – this possibility of this is explained in the terms and conditions.

Mrs W didn't accept the investigators findings and asked for an ombudsman to reach a decision. She provided further submissions for me to consider.

- Crowdstacker should have voted against the appointment of administrators, so that the remaining assets of the borrower would have been available for creditors/lenders benefit.
- The situation could have, possibly, been recovered to some extent if Crowdstacker had voted against the RP which removed all the lenders security rights. At least Crowdstacker would have been acting to preserve the lenders most valuable rights and justifying its legal expenses.
- She believes there had been a complete lack of oversight by Crowdstacker over the borrower's operations and this has led to a substantial proportion of her losses - as such some compensation is due.
- She questions the legal expenses has Crowdstacker incurred that resulted in the lenders having to surrender all the compensation that they were awarded in the RP – this wasn't acting in her interests.
- She accepts that losses can occur, but on this occasion, she only invested because of the stated security and there was no prior advice that such could be removed by court action.

### **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've reviewed all of the information provided by the parties but have concentrated my findings on what I believe to be the crux of complaint. Much of this complaint concerns Crowdstacker's actions after Mrs W invested in the loan, specifically the events following the defaulting of the loan and recovery action. In that regard the most relevant part of the terms relate to the agreement that the security trustee can act on behalf of investors, like Mrs W. In this situation the security trustee is an affiliated company of Crowdstacker and acts as its agent. I note the following:

#### ***"14. Loan Variation***

*14.3. You agree that the Security Trustee will be acting as agent on your behalf in negotiating and agreeing any amendments to the Loan Contract with the Borrower and in entering into any amendment to the Key Commercial Terms.*

*14.4. You hereby appoint the Security Trustee (for the duration of your membership of Crowdstacker) as your agent with full power and capacity to carry out amendments under this clause 14 without your specific agreement. You agree that you will then be bound by those changes. You agree and acknowledge that the Security Trustee shall take on no liabilities, obligations or rights under the Loan Contract as a result of such agency, and you agree that you will continue to be solely bound by the rights and obligations of the lender under the Loan Contract (as amended)."*

I also note the terms and conditions cover the scenario where a borrower defaults on payments. This section explains the Security Trustee (as agent acting on Crowdstacker's

behalf) make attempts recover funds. When initial attempts fail the loan is placed into default – the terms confirm:

*“19.2. If the Loan is placed into default, you authorise the Security Trustee to novate the outstanding loan to the Security Trustee at any time without the requirement for the Security Trustee to notify you in advance. Either we or the Security Trustee will notify you when the outstanding Loan has been novated to the Security Trustee or to an affiliate company of the Security Trustee. Please note that the Security Trustee may need to novate the debt to one of our affiliate companies to enable us to commence legal proceedings against the Borrower for the full amount outstanding. The Security Trustee or an affiliate company of the Security Trustee will then investigate the amount of debt that is likely to be successfully recovered through the courts. If the Security Trustee or an affiliate company of the Security Trustee deems it appropriate, it will instruct solicitors to file court claims to recover the debt. The Security Trustee or an affiliate company of the Security Trustee will pay back to lenders in their proportionate share any funds successfully recovered, less its costs incurred during that recovery. The Security Trustee or an affiliate company of the Security Trustee will act in a fair and equitable manner to achieve recovery for all affected lenders, which may include extending payment terms or selling the debt to a third party.”*

Essentially lenders appoint Crowdstacker to act as their agent in relation to the loans they invest in – which includes any recovery action when loans default. I've considered the actions Crowdstacker took after Mrs W invested.

I'm satisfied Crowdstacker did keep Mrs W and other lenders up to date with the performance of the loan – including when it went into default. It informed lenders in early 2019 that the borrower's business had been placed into administration. Following this, updates continued to be provided and indicated that while there were delays in repayment, there was an expectation that full capital was returned. This changed when a February 2021 update confirmed a likely shortfall. This was based on the information in the administrator's latest progress report (dated end of January 2021).

Crowdstacker has provided evidence from its update that it did challenge the administrator on this significant change in position. It gave lenders details of the responses it received. The administrators then proposed a RP. Crowdstacker opposed the RP as it didn't think it would result in a fair treatment to the lenders it represented. It proposed to take legal action to reject the RP and attended court hearings as part of this process to challenge various aspects of the proposed RP. Ultimately it was unsuccessful with this, and the RP was approved. But I've seen evidence through the published court judgment that supports the attempts made by Crowdstacker to reject the RP. It also indicates it was working to support interests of lenders like Mrs W. So, I don't find a failing by Crowdstacker resulted in the approval of the RP.

From the information I've seen, the decisions taken by the administrator were a key factor in the reason why Crowdstacker's lender suffered losses. Crowdstacker didn't have control over this. It made attempts through legal action to prevent the RP. I'm satisfied from the available evidence that lenders (including Mrs W's) - interests were being represented through the recovery and subsequent legal process Crowdstacker was involved in. Mrs W may have preferred Crowdstacker to present different arguments to the court, but this doesn't mean it failed to act in her interest. For the reason previously explained, I haven't found a failing in this respect. I also haven't found that Crowdstacker's actions contributed to the failure to recover funds through the security.

Mrs W has raised a concern that she wasn't aware the security for the loan could be removed by a legal process. The ultimate demise of the borrower's business and the actions taken by the administrator weren't something that were known at the outset. So, I don't think

it's reasonable to say Crowdstacker should have made the possibility of these specific events clearer. Rather I see this as part of the broader risk of P2P lending that following default it is possible funds aren't returned to investors in full. And I think this risk was adequately explained before Mrs W invested.

As part of the RP there was to be £75,000 distributed to Crowdstacker lenders. But it says contesting the RP required legal services which were funded by the security trustee. And the creditor payment was utilised for part of these legal costs. And Crowdstacker says in fact the recoveries to date have not reimbursed the costs incurred by the security trustee. It has pointed to the terms and conditions to show this possibility is covered. Having reviewed this section of the terms, I can see that it says any recovery payments made will be "*less its costs incurred during that recovery.*" So, I don't find that Crowdstacker has acted unfairly in the approach taken to deduct costs.

Mrs W has suggested that a lack of oversight by Crowdstacker over the borrower's operations has led to a substantial proportion of her losses. With hindsight, I can appreciate why Mrs W feels closer monitoring of the borrower's operations could have resulted in a different outcome in respect of the loan repayment. However, I need to consider whether Crowdstacker has acted, or failed to act in a way that that it was required to, which caused Mrs W to suffer a loss. I haven't found that in respect of the loan that it was required to monitor or have oversight of the borrower's operation. Post investment, Crowdstacker's role in the running of the platform was essentially to monitor the payment by borrowers of interest for onward payment to lenders. Once a payment problem occurs, Crowdstacker's role then includes recovery action – as described previously. While it has responsibilities in the administration of the loan, I don't think this extended to having a monitoring responsibility of the operations of the borrower in the way Mrs W suggests.

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 Crowdstacker that contributed to the problems and costs incurred in the recovery process. Having reviewed the circumstances of this loan - I don't find that Crowdstacker is responsible for the losses Mrs W has incurred. I've found that it did act in and a fair and reasonable way when fulfilling its obligations to Mrs W.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 November 2023.

Daniel Little  
**Ombudsman**