

The complaint

Y, a limited company, complains about Funding Circle Ltd's actions in connection with a commercial lending arrangement it entered into. This complaint is brought by Mrs I, owner and sole director of Y.

What happened

Funding Circle provides a peer-to-peer lending platform and administers loans on behalf of both corporate and individual investors, who are the lenders in these arrangements.

Y contacted Funding Circle in 2017 seeking to raise funds of £120,000 to open a second retail outlet. Funding Circle agreed and advanced Y the sum of £127,200 (inclusive of a set-up fee of £7,200), to be repaid over five years at £2,734.03 a month. One of the borrowing conditions was that Mrs I stand as guarantor, meaning if Y didn't keep up the payments, Mrs I could be pursued for recovery.

Y accepted the loan terms and Funding Circle issued the funds of £120,000 in October 2017.

Due to payments not being made by Y Funding Circle defaulted the loan in May 2019 and was, prior to transferring the loan to a company that I will call "A", seeking recovery of the sum recorded in its books as owing and due under that loan from Y.

Mrs I complained to Funding Circle that it had acted irresponsibly in approving the loan and it didn't conduct appropriate checks on Y's ability to repay it. Mrs I provided Funding Circle with various documentation which she considered should've prompted it to reach a different outcome in terms of its lending decision.

Funding Circle responded to Mrs I. It didn't agree with what Mrs I had said. It said that in considering Y's application it had undertaken affordability checks. These included an assessment of the 2017 business accounts, bank account statements, a credit check and a turnover/net profit projection for 2018. It said none of this indicated signs of a business under stress, and that the loan payments were thus deemed affordable.

Mrs I remained unhappy with the position and on behalf of Y referred matters to us.

Y's complaint was considered by one of our investigators. He looked at the steps Funding Circle had taken in considering the loan application. In doing so, he took into account guidance set out by the Lending Standards Board ("LSB") in respect of lending to business customers. While Funding Circle wasn't a subscriber to the LSB, the investigator considered that guidance representative of good industry practice.

Based on the evidence Funding Circle provided, our investigator was satisfied it had taken appropriate steps to assess Y's ability to repay the loan in a sustainable manner without incurring financial difficulty. And he noted the financial information and credit checks Funding Circle had looked at were in line with the factors suggested by the LSB guidance. He was also satisfied that Funding Circle's decision to lend was a fair one and it had done nothing wrong in its management and administration of the loan before or after it was defaulted.

Mrs I didn't accept the investigator's conclusions and asked for a review. In doing so, she reiterated and expanded on her previous submissions and to say that the investigator's conclusion/assumption that the proposed second retail unit would be making a similar net profit to the existing retail unit immediately was both "*unfounded and unsound*".

In April 2023 I issued a provisional decision on this case. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to ensure all parties, especially Mrs I, that I've read and considered everything on file.

I accept that Mrs I might like me to, but I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. And my approach in this respect is in line with the rules we operate under.

Our investigator set out in some detail the information Funding Circle took into account when reaching the decision to approve Y's loan application. I don't consider it necessary for me to repeat that information here; there's no real dispute over what Funding Circle took into account, or what the LSB guidance suggests are relevant factors affecting a commercial lending decision. For the avoidance of any doubt, I'm satisfied that in obtaining information relating to Y's financial position and about how Y had handled previous and existing credit commitments, Funding Circle got appropriate information on which to base its lending decision.

The key question is whether there was anything in that information that suggested Funding Circle ought to have done more investigation into Y's ability to sustain the loan payments. Mrs I clearly feels that this is the case. She's provided examples of areas where she feels the financial documents indicate further enquiry would have been appropriate.

Funding Circle, on the other hand, says that there were no obvious signs of financial stress that would have prompted it to ask for more evidence or to make further enquiries.

I accept there were some indications that Y might have found it difficult to meet the loan payments. But I must also bear in mind that the purpose of the commercial borrowing was to expand the business by opening a second retail outlet operating in exactly the same field as Y's existing retail outlet.

I must also bear in mind that Y had, in 2017, been trading for seven years and had made a net profit in 2014 (£23k), 2015 (£43k), 2016 (£34k) and 2017 (£19k) and was projected to do so in 2018 (£44k) and a reasonable explanation had been given (by Mrs I) for the fall in net profits in 2017.

It's not unusual for an enterprise to borrow money in order to invest and grow its business. A key aspect of business lending involves basing lending decisions not solely on the past position, but on the growth proposition. It would be unreasonable if I were to say that firms should only approve lending where the underlying commercial venture is guaranteed to succeed. There is inevitably an element of risk involved.

Of course, a responsible lender (or lending platform) should be considering that risk. They can do this by assessing a business plan, or making other enquiries about the purpose of the borrowing and how the investment might translate to increased turnover or sales.

Funding Circle established that Mrs I intended to expand her business by opening a second retail outlet operating in exactly same field as its existing retail outlet. The proposition doesn't appear to have been one that was entirely without merit. And in being asked to consider a borrowing proposal, a lender or lending platform isn't required to advise on the wisdom of the applicant's proposed course of action. It doesn't automatically adopt the role of advisor simply by virtue of being asked to lend money or other support for a business venture.

I accept what Mrs I says about the size of the loan when measured against Y's balance sheet position in 2017 (and 2016) and the cost of the loan repayments when measured against Y's net profit for 2017 (and 2016). I also accept what Mrs I says about a second retail outlet (on its own) not making a net profit immediately, something that the investigator suggested would be the case.

But in my view Funding Circle was entitled to rely on Mrs I's projected net profit for Y of £43,700 for 2018 and it wasn't necessary for it to enquire about how this sum was split between the two retail outlets (current and proposed), or whether the existing retail outlet was projected to make a net profit of more than £43,700 with the proposed retail outlet projected to make a loss equal to the projected net profit of the existing retail outlet less £43,700.

It also needs to be remembered that as well as having regard to the accounts provided by Mrs I in respect of Y for 2017 (and by default 2016) when deciding whether to lend, Funding Circle also had regard to Y's bank account balance and turnover and a credit risk report provided by one of the major credit reference agencies, none of which caused Funding Circle concern. And for the record I've seen nothing in any of these documents that would or should have caused Funding Circle concern or anything that meant it should have made further enquiries.

Taking all of this into account, while I understand Mrs I's strength of feeling I'm satisfied that Funding Circle undertook reasonable and proportionate checks before it agreed to lend to Y. It's of course regrettable that things didn't work out as Mrs I intended. But I don't think that's attributable to Funding Circle's actions in approving the loan.

I would add that like the investigator I'm satisfied that Funding Circle has done nothing wrong in its management and administration of Y's loan (to the date of this decision) and this includes the recovery action it has taken against Y since the loan was defaulted.

Finally, and for the sake of completeness, I would like to make it clear that I make no finding in this decision (nor am I able to) on the fairness, or otherwise, of Funding Circle's recovery action taken against Mrs I personally after the loan was defaulted.

Funding Circle didn't respond to my provisional decision.

Mrs I responded to my provisional decision to say that she, on behalf of Y, didn't agree with it. In summary she said:

- our investigation failed to take into account Funding Circle's actions against Y after May 2019, in particular its decision to transfer the loan to A
- Funding Circle's actions since May 2019 has been, amongst other things, unfair, unreasonable, unprofessional, harassing, and in breach of one or more legal and regulatory obligations

In response to my provisional decision Mrs I provided a number of documents including, but not restricted to:

- correspondence between her and Funding Circle between May 2019 and April 2021
- correspondence between her and our service between May 2021 and August 2023
- correspondence from A (and its agents) dated June 2021

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 would like to make it clear, for a second time, that I'm satisfied I don't need to comment on every point raised by Mrs I (on behalf of Y) to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. And my approach in this respect is in line with the rules we operate under.

I accept that Mrs I doesn't agree with my finding that Funding Circle undertook reasonable and proportionate checks before it agreed to lend to Y or with my finding that Funding Circle did nothing wrong in granting the loan to Y that it did on the terms that it did. But Mrs I has provided nothing materially new in her response to my provisional decision on this point. So, although I don't underestimate Mrs I's strength of feeling, I see no good reason to depart from my provisional findings on this point and I now confirm them as final.

Mrs I submits that our service's investigation failed to take into account Funding Circle's actions against Y after May 2019, in particular its decision to transfer the loan, along with any outstanding balance owed by Y under it, to A.

First, I think it's worth pointing out that Funding Circle took the decision to transfer the loan to A in June 2021, after Mrs I (on behalf of Y) complained to our service. This means that this particular point didn't form part of Y's original complaint.

Secondly, I would also point out that in my provisional decision I said that:

"I would add that like the investigator I'm satisfied that Funding Circle has done nothing wrong in its management and administration of Y's loan (to the date of this decision) and this includes the recovery action it has taken against Y since the loan was defaulted".

So I don't agree our service failed to take into account Funding Circle's actions against Y after May 2019. However, in light of Mrs I's response to my provisional decision, I would make the following comments and observations:

- most of the correspondence Mrs I has submitted, as part of her response to my provisional decision, is correspondence between Funding Circle and her in her capacity as guarantor and not in her capacity as owner and sole director of Y
- as pointed out in my provisional decision, and as I understand Mrs I accepts, I make no finding in this decision (nor am I able to) on the fairness, or otherwise, of Funding Circle's recovery action taken against her personally after the loan was defaulted
- Having regards to everything that has been said and submitted, including Mrs I's response to my provisional decision and the loan terms and condition Y agreed to, I remain of the view that Funding Circle has done nothing wrong in its management and administration of Y's loan and this includes, but isn't restricted to:
 - defaulting the loan when it did
 - seeking from Y, in the manner that it did and when it did, the sum it says was due and owing to it following the loan being defaulted, remembering I make no finding (nor am I able to) on the fairness, or otherwise, of Funding Circle's recovery action taken against Mrs I personally in her capacity as guarantor
 - transferring the loan to A

I appreciate Mrs I, as owner and sole director of Y, will be disappointed by my decision but for the reasons given I'm satisfied that Funding Circle undertook reasonable and proportionate checks before it agreed to lend to Y, it did nothing wrong in lending to Y when it did and on the terms that it did and it did nothing wrong in its management and administration of Y's loan following its decision to default it.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Y to accept or reject my decision before 8 December 2023.

Peter Cook
Ombudsman