

The complaint

The estate of the late Mrs T complains about the way Funding Circle Ltd has dealt with the administration of gaining access to the funds held in Mrs T's Peer-to-Peer (P2P) lending account following her passing.

What happened

Mrs T held two P2P lending accounts on Funding Circle's platform. In March 2022 her executors informed Funding Circle of her passing. Probate was granted in April 2022 and the available cash funds from the account were released to the estate in following this. But there remained invested funds that still needed to be passed to the estate.

In June 2022, the executors complained to Funding Circle after access to the accounts was withdrawn. They raised concerns about not being given full online access to the accounts to allow for the withdrawal of available funds. They said Funding Circle's handling of the situation had caused them a considerable amount of stress and anxiety.

Funding Circle responded to the complaint. It didn't uphold it. In summary it said:

- It has an obligation to ensure that it protects each individual investor's account and therefore cannot change the ownership of the account.
- Repayments from borrowers will accumulate on the accounts and as funds become available these can be withdrawn to the nominated bank account. There is no way to speed up the process of liquidating the account.
- As it cannot provide access directly to the account, Funding Circle will provide all the necessary details to upon request such as periodic updates, relevant tax statements and related account information.

The executors didn't accept these findings and referred the complaint to this service for independent review.

After the complaint was referred to this service, Funding Circle sent correspondence addressed to the late Mrs T. The executors raised further concerns about this. Funding Circle apologised for any distress regarding the communication that had been released in error. It made an offer of £100 to the executors to recognise the impact of this error.

One of our investigators looked into the complaint. As part of his initial investigation, he received confirmation that Funding Circle was prepared to increase the offer of compensation it made to £150 for the erroneous communication it sent. He then went on to assess the complaint. He didn't find that Funding Circle had done anything wrong in respect of how the account was being administered following Mrs T's passing. In summary he said:

- Funding Circle have applied their terms and conditions fairly – referencing the section relating to the death of an investor. He didn't agree that taking "instructions" meant the personal representatives will be able to continue to run the account in the same way as the original investor or take over the original investor's account.
- He was satisfied that Funding Circle has been taking instructions from the executors

as required. The method Funding Circle has put in place to accept a representative's instructions is fit for purpose (especially in light of the intended role of an executor), and it removes the possibility of opening itself up to any regulatory or legal issues in the future by either transferring the accounts or allowing third party access to a deceased consumer account.

- We can't consider compensation for distress to the executors as they themselves don't have the required customer relationship with Funding Circle in respect of Mrs T's accounts.

The estate didn't agree with the investigators conclusions and asked for decision to be made by an ombudsman. In summary they said:

- The outstanding dispute is about online access to Mrs T's two accounts by the executors.
- Funding Circle's terms and conditions are badly worded, so can be read in many ways. Reliance should therefore be in accordance with the FCA principles.
- They are Mrs T's personal representatives. That doesn't make them customers, but it does mean that if they're treated differently to Mrs T, then they're being prevented from properly representing her.
- Immediate access to all the information for the accounts isn't being provided and funds aren't able to be withdrawn at the estate's convenience.

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.

The crux of this complaint concerns how Funding Circle has dealt with requests for access to P2P lending accounts from the executors of the late Mrs T's estate.

Firstly, I've looked at what Funding Circle's terms and conditions say about deceased customer accounts. The relevant section says:

"33. Investor death

*33.1 If you die, we will close your **Funding Circle ISA** and the tax benefits will cease on your death. Any interest received after your death will be paid into a **Classic Account** and will not be exempt from income or other taxes from the date of your death.*

33.2 Your personal representatives must provide us with proof of your death and of their appointment, after which we will act in accordance with their instructions.

*33.3 In the circumstances set out in the **ISA Regulations**, your surviving spouse or civil partner may be entitled to an additional **ISA** allowance equal to the value of your **Funding Circle ISA** as at the date of your death."*

From this I'm satisfied that when a customer dies, Funding Circle is required to act on instruction from the deceased personal representatives to allow them to fulfil the legal requirements to pass on the assets of the estate to the beneficiaries. What the terms don't cover is the situation where the personal representatives request to be given full access to the accounts or have them transferred into their name – which is what happened with Mrs T's accounts.

I've considered the role of the estate and executors in the scenario. The executors who bring this complaint on behalf of Mr T's estate are the personal representative that are legally

responsible for the 'estate's assets'. In the context of this complaint the assets are the funds held in P2P loan agreements. The nature of this type of asset is that it isn't immediately accessible in the same way as something like cash in a bank account would be. So naturally it is going to take longer for the estate to be able to receive the funds and for the executors complete their legal responsibilities to distribute the assets.

While I can understand why the executors would have preferred to be given full access to the account, I don't think this is something that Funding Circle was required to do. I also don't think the fact it hasn't agree to do this, means it has failed to act in accordance with instructions of the estate – as per the terms and conditions.

I've looked at how Funding Circle dealt with the requests from the executors and I'm satisfied it did act in a way that allowed the executors to fulfil their obligations. Funding Circle paid the cash balances to the estate when it initially became aware of Mrs T's death. It also explained that it will *"continue to recover payments and interest earned on the outstanding loans up until the point they are liquidated and we will conduct periodic checks on the account to see if there are any late loans or recoveries that have been paid back, and notify the executor when enough has accrued to withdraw out again."* As explained above, due to the nature of this type of investment the passing on of funds can take time, so the approach set out seems reasonable. I haven't seen that Funding Circle has prevented funds being released to the estate.

Funding Circle also confirmed that while it couldn't give full access to the accounts, if the executors have any requests regarding the accounts, they should let it know and it can provide any required information. I can see it provided statement data to the executors when this was requested. So again, I'm satisfied that Funding Circle was acting in a way that allowed the executors to fulfil their responsibilities on behalf of the estate. Going forward Funding Circle does still need to provide updates as required by the estate – for example information in relation to the recovery of funds from non-performing loans.

I note the comments raised by the executors about acting in line with FCA principles. The executors appear to accept they are not customers of Funding Circle in respect of Mrs T's P2P accounts. The funds held in the accounts were Mrs T's, so in releasing them to her estate Funding Circle needs to ensure it provides adequate protection. While the executors don't agree with the process and approach taken, I haven't found that this means Funding Circle has done something wrong or acted unfairly.

I acknowledge that the executors have requested compensation for the distress they have personally suffered in dealing with the matter. I haven't found Funding Circle at fault, but in any case, I can't award compensation for distress to the executors in their personal capacity. This is because they are not eligible complainants. Mrs T is the eligible complainant as the account holder, the executors act only as the legal representatives of the estate. I note that Funding Circle has agreed a payment for a communication error that happened after the original complaint was made. I understand this compensation has been accepted, so I won't comment further, and for the reasons explained, I can't consider or award compensation for any upset caused to the executors anyway.

In summary, I have found that Funding Circle has acted fairly and reasonable in how it has administered the account following Mrs T's passing. The nature of investments in P2P lending mean there is uncertainty when funds will be returned and the frequency of payments, especially where there are payment issues with a loan. While I can understand why the executors would like to have full access to the accounts and their desire to complete their responsibilities to the estate, I haven't found that Funding Circle are at fault for not giving them the access they request.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs T to accept or reject my decision before 9 November 2023.

Daniel Little
Ombudsman