DRN-4773394

The complaint

Mr T complains he was misled by Assetz SME Capital Limited (Assetz) into investing on its peer-to-peer (P2P) lending platform. He is unhappy that shortly after investing he was told his funds would be frozen, a fee applied and it could be up to five years for the return of his money.

What happened

Mr T has held a P2P lending account with Assetz for many years and has invested across several products.

In September 2022, Mr T responded to a mailing from Assetz, about an increase in interest rates, to invest funds in his Quick Access Account (QAA). He invested £50,000 into the account over two tranches.

In December 2022, Assetz announced that it had decided to close its retail platform and conduct a solvent run-off of its retail loan book. Assetz says this was due to the substantial rises in bank interest rates which led to lenders withdrawing from the platform. As part of the run-off process, Assetz announced that it was necessary to introduce a Lender Fee.

Assetz wrote to lenders on 15 December 2022 to explain the following:

"The ceasing of new retail lending means a significant drop in our income for the retail part of the business. We are in the process of reducing overheads to match this new permanent state and in the meantime, have calculated the following Lender Fees to be applied to cover the anticipated costs of adjusting the business to a run-off footing then managing the loan book through run off and returning capital to investors.

- *Through to end of June 2023 - 2.9% pa of performing loans*
- *July to December 2023 - 1.4% pa of performing loans*
- *January 2024 onward - 0.9% pa of performing loans*

(This equates to an average fee level of 2.15% for the first 12 months and a 5-year effective fee of 1.15% pa)

These are estimated fees and subject to review over time. They would be applied to interest received by investors (i.e.: on performing loans only), commencing once software updates are implemented."

Assetz also explained in this notice that it was closing its secondary market, a tool which allowed lenders to sell their loans to other lenders on the platform. As such, lenders like Mr T were unable to exit from the loans they were invested in and had to wait for the pro-rata return of capital from loans that repay in the future.

Assetz then wrote to lenders on 17 May 2023 explaining the following Lender Fee amendments:

- Through to the end of December 2023 – 2.9% pa of performing loans

- January 2024 onward – 0.9% pa of performing loans
- This equates to an average fee level of 2.90% for the first twelve months and a five-year effective fee of 1.3% pa

Assetz wrote to lenders again on 16 June 2023 to make them aware of further amendments to the Lender Fee:

- For the period of June-September 2023 – 6.25% pa of performing loans
- October 2023 to December 2024 - 0.9% pa of performing loans
- Post December 2024 no fee expected
- This equates to an average fee level of 3.52% for the first twelve months and lower five-year average fee of 0.88% pa

In January 2023, Mr T raised a complaint with Assetz. In summary he said the September 2022 mailing he responded to was clearly designed to increase the flow of funds to the platform. And at the same time Assetz had been stating its commitment to growing the retail business. So when he was told less than three months later his newly invested funds would be frozen and a fee applied, he found this to be unacceptable – and not in line with the information he was given before he invested the money. He requested full repayment of his balance.

Assetz considered Mr T's complaint but didn't uphold it. In summary, it said:

- During 2022 there was a sharp and substantial rise in bank interest rates. This led to the Access Accounts becoming less competitive. It raised the rates on the Access Accounts and initially saw healthy net inflows of capital, but after continued bank interest rate rises, retail investors were withdrawing capital on a net weekly basis. Following a review of the market, it reluctantly had to make the decision to close the retail platform and conduct a solvent run-off of the retail loan book.
- Its terms and conditions made lenders aware that it could introduce a Lender Fee.
- When deciding to introduce the Lender Fee, it considered that any variation to its terms should strike a fair balance between Assetz's and lender's interests.
- The Lender Fee benefits lenders as it allows Assetz to continue to provide its service and provide better outcomes for them.
- Alternatives to the solvent run-off were considered but were assessed to be potentially of much greater detriment to lenders.

Mr T didn't accept Assetz's response and so he referred his complaint to this service for an independent review.

One of our investigators considered Mr T's complaint but didn't uphold it. In summary, they said they were satisfied that Assetz had considered alternatives to a solvent run-off and that its decision was ultimately fair and reasonable in all the circumstances. They also didn't find the September 2022 mailing was misleading. The investigator found it was clear the ability to withdraw from the investment was never guaranteed and a warning was given as it states access times relate to normal market conditions and cannot be guaranteed.

Mr T didn't accept the investigator's findings. In summary he said:

- His complaint didn't centre on the Lender Fee, or the route Assetz chose to wind-down the retail business. His complaint is about the September 2022 promotion which induced him to invest £50,000 being unfair.
- Assetz increased rates to induce him to invest funds in a QAA but then closed access to that account within less than three months with the excuse that bank interest rate rises meant that it was unviable to continue with the retail business.

He finds this unfair as interest rates had been increasing in the year previous to the promotion and were clearly anticipated to further increase. Assetz did not state its concerns at the time about the effect of rising rates on its business. He would not have invested, if he knew this was the state of Assetz's business.
- Assetz made public statements that it was committed to the retail business when clearly it was not. He would not have invested had he known curtailment of the retail business was an active consideration. It is unfair to take money from retail investors so close to the closure of the retail business stating it is committed to it and taking retail funds.
- With new business stopped his funds have gone towards existing extensions on loans for developments - this was not the intended purpose of his funds at the time of the promotion and again he would not have invested had he known it was very likely that he would be investing in trying to retain value in the existing loans (rather than profitable new loans).

As Mr T didn't accept the investigator's findings, the complaint has been passed to me to decide.

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 note Mr T has confirmed that his complaint doesn't centre on the Lender Fee, or the route Assetz chose to wind-down the retail business. He says he agrees a solvent route to do this is better, without administrators. So, I haven't concentrated my findings on these points, other than to say I'm also satisfied overall Assets gave due and careful consideration to the potential outcomes for lenders and I'm satisfied it examined the data it had available, as well as the forecasts it was able to produce, in order to conclude that of all the options, introducing the fee would likely provide the best overall outcome for its lenders. In other words, I'm satisfied that Assetz has had regard for its lenders' interests as it is obliged to under the FCA's principles, and that looking at the circumstances as a whole, it has treated its lenders fairly.

The crux of the issue in dispute relates to whether Assetz has treated Mr T unfairly through the communications it sent him in September 2022. Mr T responded to this mailing by making new investments into his QAA. Mr T's concerns are that he was induced into making additional investments as a result of this promotion and he believes Assetz treated him unfairly as only a few months later when deciding to wind-down the platform it closed the secondary market effectively locking his money in and charging a fee. He believes Assetz failed to disclose it was considering this action at the time it induced him to invest funds.

I've reviewed the September 2022 mailing Mr T was sent. This is a fairly short communication that sets out an announcement that rates were to be increased across all of the Access Accounts. This included an uplift from 3.75% target rate to 3.9% for QAAs. There is a warning to say access times relate to 'normal market conditions' and cannot be guaranteed. There is a link to the website that gives further information on 'normal market conditions. This essentially describes the situation where economic conditions are reasonably stable and lenders are easily able to trade loans. But it also warns market conditions can change and this impacts the speed of withdrawals. There is a further comment at the end that says:

"We will continue to review our rates and aim to provide our Investors with attractive, risk-adjusted returns – which given the current surge in inflation impacting our cost of living, have never been so important for so many people."

I note Mr T had held an Access Account with Assetz for a number of years. This meant he had experienced the impact on these accounts during the pandemic where Assetz took actions when it was communicated that abnormal market conditions were impacting withdrawals. I've seen Mr T's transaction history on his QAA during this period, and the withdrawals he made. So I'm satisfied from this evidence he was aware of the potential impact of a change in market conditions to his ability to withdraw funds.

Having review the communications, I haven't found that the information within the September 2022 mailing was misleading. It is clear that any funds invested would be accessible, as per the operation of the QAAs, in normal market conditions, but outside of that there was no guarantee of access. The information on Assetz's website did provide understanding of the risk to the operation of Access Accounts if normal market conditions were no longer prevailing – so the ability to sell loans on the secondary market wasn't available and this is something that wasn't guaranteed. I appreciate that Mr T was shocked to find out so soon after investing that he couldn't withdraw his funds, but I don't find this was because of misleading information provided at the time he invested in September 2022.

Mr T has questioned Assetz's justification for the actions it took. He has referred to bank interest rates already increasing in September 2022, and were forecast to increase more, so he doesn't accept Assetz has treated him fairly by inducing him to invest when it was already aware of the market conditions relating to bank interest rates.

Assetz has explained the decisions it took in executing the wind-up arrangements in December 2022. It says this was as a result of a variety of unanticipated events, including substantial economic factors which conspired to raise interest rates in historic fashion in the autumn of 2022. Assetz says these economic shocks included but were not limited to:

- The war in Ukraine.
- The on-going impact of Covid and the knock-on effects of public economic support during the pandemic (and its subsequent withdrawal).
- The economic turmoil caused by the mini budget of 23 September 2022 and spiraling inflation.

Assetz says that, given the significant and sudden rise in interest rates, its P2P loans were no longer as attractive to new and existing lenders and new loans stopped being originated. It says it was only on 15 December 2022 that the final decision to close the retail platform and reduce its costs of operation as quickly as possible.

In regard to the email it sent in September 2022, it says its decision to raise interest rates for investors worked well as investment surged for a period and net inflows were healthy. But it says this changed as the Bank of England continued to increase its base rate, on an accelerating basis referencing the amount of the increases after September 2022. It says as a result its investments became uneconomic and outflows commenced from the Access Accounts, leading to the eventual closure in December 2022 when it was clear it could not keep up with the unexpected rate rises elsewhere. It also says it mailed investors in November 2022 to poll what interest rate level might attract high enough volumes of new investment. But the results were that there was not material enough demand at the maximum level it could provide using the existing loans in the Access Accounts.

It says all of this meant its fee structure which operated under normal circumstances was no longer suitable or sustainable. It says that without new loans being written there were no origination fees to fund the platform. It says the platform still had significant ongoing costs which were necessary to support the existing loan book and to ensure maximum returns for existing lenders.

It’s not my role to determine whether Assetz could decide to close its retail platform. I consider that to be a legitimate business decision that Assetz could fairly make. Rather, it’s my role to determine whether, as a result of that decision, Assetz has fairly considered the impact on lenders. And in doing so, it fairly considered the alternatives.

Assetz says it considered triggering its stand-by plan and wind-down arrangements as an alternative to introducing the Lender Fee. Assetz says this would involve taking one of the following possible actions:

- Selling the business as a whole.
- Selling the loan book and use the proceeds to repay lenders (retail and institutional).
- Closing its origination business and focus solely on managing the run-off of the loan book whilst remaining solvent (and without any additional fees being charged) – essentially winding down the loan book over the normal term of the loans.
- Appointing administrators over to undertake an insolvent wind-down.

Assetz has provided our service with a comprehensive response to why each of these actions were considered to be unsuitable. I haven’t commented on these in detail as Mr T has agreed that a solvent wind-down was in his interests.

Taking all the above into account, I’ve not found Assetz treated Mr T unfairly in how it communicated with him when he made his investment in September 2022. I’m persuaded it has provided sufficient reasons to explain why the change in market conditions between the mailing it sent in September 2022 and the December 2022 closure notice resulted in it changing the business direction it was taking. I appreciate why Mr T feels he has been treated unfairly because of the relatively short period of time between the two events, and why in hindsight he would never have made his investments. But I haven’t found this was as a result of Assetz misleading him or treating him unfairly. It is true the Bank of England had increased the base rate before September 2022 (following a sustained period of low rates for many years), but there was a clear acceleration of rates in the period after the mailing. I don’t think Assetz would have known in September 2022 that interest rates would increase to a level that meant it wouldn’t be able to attract new lending. I also don’t think it could have been aware at the time that the rate increase it introduced on its products wouldn’t be sufficient to maintain the level of new lending required. And as already mentioned, Assetz has also referenced other market factors that contributed to its decision.

Overall, I’m satisfied the decisions made by Assetz were as a result of changing market conditions, and not plans it had already anticipated it would introduce so soon after raising its rates. So, on balance, I’m persuaded the decisions made by Assetz’s as part of its wind-up didn’t result in Mr T being treated unfairly, as they were consistent with the objective of maintaining the solvent run-off of the platform, whilst allowing lenders to continue to benefit from capital repayments and some interest (albeit less than expected). And I haven’t found that Assetz mis-led Mr T when it sent him the September 2022 mailing, which led to him investing further funds.

My final decision

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 T to accept or reject my decision before 30 December 2024.

Daniel Little
Ombudsman