

The complaint

Mr M complains about losses he has incurred on a loan he invested in on Assetz SME Capital Limited's peer-to-peer (P2P) lending platform. He says its failure to complete sufficient due diligence and monitoring of the loan has resulted in him losing money.

What happened

Between September 2019 and February 2020, over a number of tranches, Mr M invested £10,000 in a property loan through his manual lending account on Assetz's P2P lending platform.

As part of the loan administration, Assetz's appointed a monitoring surveyor to monitor and report on discharge of the planning conditions as works progress. Throughout 2019 and 2020, the surveyor provided various reports and recommended drawdown of funds by the borrower for the reporting period. These reports were made available to investors on the platform.

In October 2020, the loan was suspended from trading on the investor platform and no further funds were advanced to the borrower. Lenders were updated to inform them this was due to Assetz being made aware of planning issues on the development which resulted in an enforcement notice from the local authority.

In November 2023, Mr M raised a complaint with Assetz about the loan. In summary he said:

- The failure of the loan is down to the borrower not having any valid planning permission for the works he undertook to the extent demolition of a nearly completed property has been instructed.
- He sees this as a failure in due diligence and duty of care by Assetz - particularly, why were monies lent to the borrower without validating that he had correct permissions in place for the scope of works and then again during the subsequent monitoring of the ongoing works.

Assetz responded to the complaint but didn't uphold it. In summary it said:

- It made Investors aware of the progress of the development and the surveyor's recommendations by sharing the reports on the platform, to allow them to make their own decisions about their investments.
- It followed the professional recommendations of the surveyor in relation to the release of funds to the borrower at each stage of the developments progress.
- It suspended trading in the loan as soon as it was made aware of the planning enforcement notice.
- It discharged its obligations under the platform terms & conditions (T&Cs).

Mr M didn't accept the response and referred his complaint to this service for an independent review.

One of our investigators looked into the complaint. He didn't uphold it. In summary he said he was satisfied Assetz conducted sufficient due diligence in order to satisfy itself that the information contained within the loan pitch was clear and not misleading. And the cause of

the project failing and the loan not performing was something that Assetz couldn't reasonably have foreseen when promoting the loan to Mr M.

Mr M didn't accept the investigator's assessment. In summary he said:

- The monitoring surveyor was negligent and should have clearly identified the risks and that the scope of works being carried out was outside the permissions granted.
- Assetz failed to carry out its obligations to question or interrogate the surveyor recommendations and ask for more information on the "minor risk" attributed by the surveyor.
- It also failed to conduct a lender vote to see if lenders wanted to release more tranches even when it had been advised of the infringements taking place
- Assetz is hiding the failures of the surveyor, taking no responsibility for its own lack of adequate project supervision and due diligence and putting lender capital at risk.

As no agreement could be reached the complaint has been passed to me to reach a decision.

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.

Firstly, I've considered Assetz's role and relationship it has with investors like Mr M, as well as the regulatory and legal framework involved. To determine this complaint, it's important to understand the role and relationship Assetz has with Mr M as an investor.

Essentially the overarching relationship is that Assetz provides potential investors with different lending opportunities by way of presenting loans available for investment on the platform, but it gives no advice or recommendations to its investors.

In reaching my decision, I've considered Assetz's wider obligations. At the time of promoting the loan in question on its platform, Assetz was authorised and regulated by the FCA. The relevant rules and regulations FCA regulated firms are required to follow are set out in the FCA's Handbook of rules and guidance.

The FCA Principles for Business ("PRIN") set out the overarching requirements which all authorised firms are required to comply with. PRIN 1.1.1G, says "The Principles apply in whole or in part to every firm". The Principles themselves are set out in PRIN 2.1.1R. The most relevant principles here are:

- PRIN 2.1.1R (2) "A firm must conduct its business with due skill, care and diligence."
- PRIN 2.1.1R (6) "A firm must pay due regard to the interests of its customers and treat them fairly."
- PRIN 2.1.1R (7) "A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading."

Assetz was also required to act in accordance with the rules set out in the Conduct of Business Sourcebook (COBS). And the most relevant obligations here are:

- COBS 2.1.1R (1) "A firm must act honestly, fairly and professionally in accordance with the best interests of its client."
- COBS 4.2.1R (1) "A firm must ensure that a communication or a financial promotion

is fair, clear and not misleading.”

So, before making the loan available on the platform for investment, Assetz needed to satisfy itself that the information it collected and used to promote the loan was fair, clear and not misleading. And it also needed to be satisfied that by providing an opportunity for its customers to invest in the loan it would continue to be acting in its client’s best interests.

In order to satisfy itself of the fair, clear and not misleading nature of the claims or assertions made in the promotional material itself, Assetz would need to carry out reasonable checks.

What these reasonable checks involve, or indeed what they might be in any given case, is something which is very much left to each provider to determine and would vary according to the particular circumstances.

Taking the above into account - I’ve firstly considered how Assetz has acted, focussing on how the loan was promoted. As the issues that appear to have caused the failure of the project and ultimately the default of the loan relate to planning approval, I’ve focussed on this.

I’ve considered whether Assetz provided clear, fair and not misleading information to Mr M about this before he invested in the loan.

The credit report was the main document available to Mr M. This contains a section on planning – and this confirmed the details of the planning permission granted on 17th November 2017. I’m satisfied the information in the promotion did accurately set out what had been approved for the project and what the anticipated completed development would comprise of. I also haven’t seen anything else within the credit report that would lead me to reach a finding that Mr M had been mis-led or that it failed to carry out sufficient checks on the information within the promotion before allowing him to commit his funds.

Once the loan was in payment and the development project commenced, drawdowns were to be agreed by Assetz in conjunction with reports produced by the monitoring surveyor it appointed. Again, this is set out in the credit report as it states *“Lenders should be aware that this is a stage drawdown facility. The structure is established up front, but drawdowns are made, normally monthly, when an independent monitoring surveyor (MS) certifies the works done on site and the loan is not otherwise in default. Individual drawdowns will be funded as the cash is needed to be paid away to cover works done on site.”*

Mr M has raised concerns that Assetz agreed to process drawdowns to the borrower when it shouldn’t have. He has questioned the role of the monitoring surveyor and said it should have identified the risks that the scope of works being carried out was outside the permissions granted. And following from this, he thinks Assetz failed to carry out its obligations to question or interrogate the surveyor recommendations to agree for the further release of funds.

From the information I’ve seen, it appears the ultimate failure of the loan is due to the collapse of the project. This was due to the borrower infringing on the planning permission agreed, leading to the local authority carrying out enforcement action which led to the demolition of part of the buildings on the site.

While a planning issue had been reported by the surveyor in earlier reports (for which the borrower had submitted amended planning for), the 20 August 2020 surveyor report identifies a further issue with the progress. It appears this was when it was first picked up by the monitoring surveyor, there was a potentially more significant issue with the borrower not following the planning approval. This report says:

“The developer has advised they have removed sections of the external walls due to be retained as part of the planning approval due to the structural integrity. A structural engineer has not inspected the existing barn walls.”

As referred to above, my understanding is this turned out to be the major issue that led to the local authority commencing enforcement action. Assetz says it received this report on 25 August 2020 for assessment. It says the final principal advance was made on 1 September 2020 for a sum of just over £60,000. But it says this was paid because at that point it wasn't aware of any enforcement action, and it only just started to raise questions with the borrower who said the removal of walls was done for safety reasons. It also explained it funds projects in arrears, so there were multiple creditors waiting for monies and it wasn't sufficiently informed at that point to be able to make a decision to shut the site down, which is what would happen if payment to creditors was not made. It felt it was reasonable to conclude that doing so would have resulted in a detrimental outcome for all stakeholders.

It was in October 2020, that Assetz updated lenders to explain it had become aware of planning issues with the development that had led to enforcement action by the local authority – leading to trading in the loan being suspended on the platform.

Further updates were sent by Assetz to lenders as the situation progressed. There were several appeals lodged by the borrower with the local authority in an attempt to get permission to allow the project to continue. But these all failed, which ultimately led to the collapse of the project and losses for lenders. I understand that recovery action is still going ahead in pursuit of the guarantor, but it isn't clear how successful this will be.

I've considered whether there is evidence to support Assetz failed to act in lenders best interest in the decisions it made to agree drawdowns to the borrower. I haven't been persuaded it is responsible for any errors that lead me to a finding that it is responsible for the losses Mr M has suffered.

In my view the overriding cause of the loan failing is due to the actions of the borrower. And I don't find that Assetz is responsible for this. I've considered the reasons Assetz has given for agreeing to the last drawdown, and I accept that this was a reasonable decision to make in light of the available information it had at the time. In hindsight, knowing what we know now about the cause of the failure of the project, a different decision could have been made on releasing drawdowns. But I also note the majority of funds had already been released to the borrower by the time there was clarity on the extent of the planning issues.

Mr M says Assetz is hiding behind failures by the surveyor and not taking responsibility for its own obligations towards lenders. But I don't agree that the available evidence supports this conclusion. I find it is reasonable for Assetz to rely on the expert reports issued by the monitoring surveyor, when deciding whether to release further funds. The actions taken by the local authority weren't something Assetz had control of, and I don't think that the information contained in the reports support that this is something that it should have clearly anticipated.

Mr M has questioned why a lender vote wasn't instructed when deciding whether to release further funds to the borrower. I note several lender votes have been held during the loan history, but these have been to make decisions on things like agreeing changes on the charges as part of the security, appointing receivers and whether to use funds recovered from the sale to pursue the guarantor. I don't think Assetz, has done something wrong by not requiring a lender vote when it made decisions on behalf of lenders to agree to further drawdowns based on the surveyor reports. Its role was to act on behalf of lenders, but I don't

think it is reasonable or practical to say it needed to instruct a lender vote for the release of drawdowns.

I'm sorry to disappoint Mr M, but I haven't found that errors by Assetz are the cause of the losses he has suffered on his investment. So, it follows that I don't require it to do anything further.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 February 2025.

Daniel Little
Ombudsman