DRN-5093809

The complaint

Mr T complains about the decision made by Assetz SME Capital Limited to introduce a fee when he withdraws money from his peer-to-peer (P2P) lending account – he doesn't think it is justified in imposing the fee.

What happened

Mr T opened an account with Assetz in June 2018 and began investing in loans on the platform in return for interest.

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 during the period it took to close the platform.

Assetz explained the ceasing of new retail lending meant a significant drop in income and so it was necessary to reduce overheads to match this new permanent state. It set out the lender fee that would be applied to cover the anticipated costs of adjusting the business to a run-off footing, then managing the loan book through the run-off and returning capital to investors.

In January 2024, it provided a further update on the winding up of the platform, within this update, it introduced a further fee relating to cash withdrawals investors make from the return of invested funds. It said:

> *"Standard Withdrawal Fees*
>
> *Since the closure of the Retail Platform in December 2022 we have seen a continued rise in the number and frequency of withdrawals made by Investors. We have monitored this to see if it was just an initial spike, but it has transpired that over the last 12 months withdrawals have increased by over 70%, and in the last 3 months alone by over 100% to approximately 6,500 per month.*
>
> *There is a cost associated with each withdrawal that is currently being borne by all Investors, regardless of how many withdrawals they have made, via the Lender Fee. Taking into account our responsibilities to treat customers fairly and in order to make the process financially viable into the future, we have decided to apply a fee to each individual transaction, rather than looking at an increase in the Lender Fee generally, as this more focussed fee will only affect those directly creating the costs rather than applying the serving of the cost to everyone.*

We have determined that at this time, a withdrawal fee of £1.00 will need to be introduced. This small charge will allow us to maintain the ability for Investors to withdraw on a daily basis if they need/want to without threatening the financial viability of the run-off. In addition, we are able to accommodate 1 free withdrawal every 90 days which will allow Investors who don't need/want to remove funds on a daily basis to avoid the fee completely, but still remove funds on a regular basis.

As per our main Platform Terms & Conditions we are hereby providing a minimum of 30 days' notice of the change and expect the Fee to go live, once the technical work required to implement it is completed, in the latter part of Quarter 1 this year."

In March 2024, Assetz sent a further update to confirm the fee would go live on 18 March 2024 and updated its terms to reflect this.

Following this, Mr T raised a complaint with Assetz about the imposition of a charge for making withdrawals from the cash he held in his account. In summary, he said:

- As his invested funds are not freely withdrawable, the withdrawal fee significantly impacts his position as an investor.
- The introduction of the fee, particular without the option to withdraw or terminate his agreement with Assetz without penalty, seems to contradict the principles of fairness and transparency.
- Assetz is encouraging regular withdrawals which is in contradiction with the new withdrawal fee structure which penalises frequent withdrawals.

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

- Introducing the fee ensures the cost of withdrawals is borne by those who directly create it, rather than increasing the overall lender fee. This means it is treating customers fairly and ensuring the financial viability during the wind-up.
- A free withdrawal every 90 days was included to seek a fair balance of apportioning cost and not increasing the platform-wide lender fee.
- It has a regulatory duty of care to make lenders aware that funds are being repaid and that they should look to remove them from the platform. The regulator has also asked firms to encourage investors to remove cash which is earning no interest and so this is why Assetz included a call to action in its communications with lenders.
- The terms and conditions relevant to when Mr T opened his account essentially allow lenders to leave at any time subject to procedural and practical formalities which are inherent to P2P investments. These formalities include a replacement lender being sourced for any active loans which is an inescapable consequence of the fact that P2P loans are, by nature, illiquid.
- The illiquid nature of P2P investments gives rise to a contract of indeterminate duration which has a bearing upon the fairness of variation clauses.

Mr T didn't agree with the response and referred his complaint to this service for an independent review.

One of our investigators looked into the complaint. They didn't uphold it and in summary said:

- They did have some concerns about the fairness of the term Assetz was seeking to rely on to introduce the withdrawal fee, particularly as it isn't specific as to when, and for what reason, new charges might be introduced. But it did say that fees would only be raised to cover the direct costs of withdrawals, so this limited how open-ended the clause was. They also acknowledged that the nature of the platform itself made it impractical for investors to always be able to exit if they objected to changes to the terms and conditions. As funds were tied up in loans, investors could only withdraw once the loans paid back or if they were able to sell on the secondary market (which had been closed by the time these fees were introduced).
- They were satisfied that it was fair and reasonable for Assetz to move forward with the run-off plan they chose - including the lender fee, based on the forecasting of the cost of the run-off. Due to the financial situation of the platform not being as favourable as the projections, Assetz did need to increase the lender fee. And the level of withdrawals has been greater than anticipated, leading to the introducing of the withdrawal fee. Assetz has chosen to levy the fee per transaction, so that those making the greatest number of withdrawals take a greater share in the cost – and this was a fair position to take. It also gave one free withdrawal every 90 days to minimise the negative impact on investors' returns, which supports that customers interests were being considered.
- The terms and conditions say the price of any withdrawal fee will be made to cover the direct costs of the funds transferred. Assetz provided an explanation on how it reached the figure of £1, which is charged to individual investors on a per-withdrawal basis. The main part of the cost reflects bank charges it must pay on each transfer. Beyond this, there were costs for the work Assetz needed to complete for withdrawals, and a smaller element for contingency. Overall, Assetz provided a reasonable explanation showing that the £1 fee isn't arbitrary and does reflect the costs of withdrawal.

Mr T didn't accept the investigator's findings and asked for an ombudsman to reach a decision on his complaint. In summary he said:

- Assetz's terms and conditions are overly broad and lack clarity on when and why new fees may be introduced.
- While Assetz's run-off strategy may have been deemed necessary from a business standpoint, the combination of withdrawal fees, delayed access to funds, and ongoing charges disproportionately burdens investors – meaning Assetz is failing to act in in his best interests.
- The 30-day notice before implementing the withdrawal fee was effectively meaningless as investors had no option to withdraw funds or close their accounts during this time because the funds were tied up in long-term loans, with no secondary market available.
- The change in the fee structure creates a significant imbalance in favour of Assetz, making the clause unfair and unenforceable.
- Despite the closure of the retail platform, Assetz continues to charge monitoring fees on ongoing loans and additional fees on defaulted loans, generating continuous revenue. This raises the question of why an additional withdrawal fee is necessary, as Assetz is already benefiting from multiple revenue streams.
- Firms are required to make client funds available promptly upon request and Assetz's policy of delaying fund transfers until the first working day of the month directly violates this principle and suggests Assetz should apply one free withdrawal each month instead.

- The delay in returning repaid funds to investors is particularly harmful because those funds do not accrue interest while sitting in the client account.

As Mr T remained unhappy, his complaint had 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 appreciate how strongly Mr T feels about this complaint. He's provided detailed submissions to support his view and whilst I've summarised some of his concerns in my own words, I've carefully read and considered everything he's said. Our service provides an informal complaints handling service and this is reflected in the way I've approached the complaint. It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome. This means I won't necessarily mention everything Mr T has brought to my attention as the purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by both parties and reach a fair and reasonable decision based on the facts of the case.

I've reviewed the term which Assetz has relied on to introduce the withdrawal fee.
The relevant term that was included when Mr T opened his account in 2018, is 10.4, which explains:

> "Upon request the Assetz Agent will instruct Assetz SME Capital that any monies in your client account that are not committed to Loans be transferred to the bank account from which the original monies were transferred into your client account. The Assetz Capital Companies reserve the right to deduct from any such payment a charge to cover the direct costs of the transfer."

I do have some concerns about the fairness of the term used to introduce the fee. This includes the fact the term relied on isn't specific in what circumstance a fee would start to apply. While there is a reference to the possibility of a charge to cover the direct costs of a withdrawal transfer to a bank account, it doesn't give any indication as to what could lead to this imposition. Furthermore, the terms and conditions don't allow for lenders to exit without penalty if they don't accept the change. Arguably, the nature of the platform itself made it impractical for investors to always be able to exit if they objected to changes to the terms and conditions, particularly as the secondary market had been permanently closed by the time the fee was introduced. Despite these concerns, I don't find them sufficient to reach a finding this complaint should be upheld. I will explain why.

The context around Assetz's decision to run-off its retail lending platform is relevant to my overall consideration of this complaint about the introduction of the withdrawal fee. Especially when considering our service's fair and reasonable remit. So, I will summarise the background to this before commenting specifically on the withdrawal fee.

Assetz has explained that it decided to commence a solvent run-off of the platform (which included introducing a lender fee) as a result of a variety of unanticipated events. These included substantial economic factors which resulted interest rates rising to historic levels in the autumn of 2022. Assetz has provided this service with information to support the options it considered and why it felt the impact on lender returns through an insolvent run-off was significant, in support of its decision to follow its plan over the alternatives.

I'm satisfied from my understanding of the situation from other complaints this service has reviewed that Assetz gave due and careful consideration to the potential outcomes for lenders. 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, the one it took would likely provide the best overall outcome for its lenders. In other words, I'm satisfied that Assetz did have regard for its lenders' interests as it is obliged to under the Financial Conduct Authority's principles, and that looking at the circumstances as a whole, it has treated its lenders fairly.

So, I've considered the reasons given by Assetz for needing to introduce a withdrawal fee, bearing in mind it had already introduced a lender fee as part of the platform run-off - just over a year earlier.

Assetz has provided an explanation to justify why it needed to do this – particularly as it knew that there would be costs associated with withdrawals when setting the lender fee. It says there is a cost associated with each withdrawal that, if not accounted for individually, would have had to be borne by all lenders, via the lender fee, regardless of how many withdrawals they made. It says it had seen a significant increase in withdrawal requests but had noted an imbalance between some lenders making many withdrawals and some none at all. It says that in order to treat customers fairly and make the process financially viable into the future, it decided to apply a fee to each individual transaction rather than use a vague estimate of future costs incorporated into the lender fee. And it says this more focused fee will only affect those who are directly creating the cost rather than applying the servicing cost to everyone.

There are also other elements of the actions taken by Assetz to support that it was acting in its lender's best interests in how it sought to apply the withdrawal fee. For example, it did allow for a free withdrawal every 90 days. So, this did provide some capacity to avoid or limit the amount of fees Mr T would be required to pay. Although I acknowledge it does mean he would potentially be leaving uninvested money on the platform and not earning returns if he wanted to avoid the fee.

I appreciate that Mr T has raised several concerns regarding to Assetz's decision to introduce the withdrawal fee, such as the 30-day notice being effectively meaningless (due to him being unable to withdraw all of his invested funds prior within the notice period). However, whilst I acknowledge his points, on balance, I'm satisfied there were reasonable grounds for why Assetz felt it was fair to introduce a withdrawal fee in 2024, despite it not previously charging Mr T to remove money from the platform. And I'm satisfied that the principle of charging those who use the service the most doesn't in itself suggest unfairness.

I've also considered the justification given for the level of withdrawal fee that Assetz set - £1 per transaction. As noted above, the term Assetz seeks to rely on says that the potential charge will be based on the direct costs of the transaction.

Assetz has provided a breakdown of the direct costs it says it incurs as a result of processing each withdrawal – to explain how the fee quantum was arrived at. The majority (over half the costs) relate to bank charges. It also says it factored in the costs for the work its finance team completes and the technical costs of implementing the withdrawal. It does include a smaller amount for contingency for variance in these costs. I've also reviewed a breakdown provided by Assetz to show the actual costs it faced for each withdrawal in hindsight using real life data – which indicates that the costs were actually slightly more than the £1 per transaction it charges.

While, the contingent element of the direct cost is somewhat ambiguous, this is a small proportion of the overall cost. I don't think this is sufficient to reach a finding Assetz is treating Mr T unfairly with the amount it is charging for withdrawals. There is some evidence to show that the actual cost to Assetz was above its estimation, indicating the contingency was needed.

I acknowledge that Mr T feels Assetz could've covered the withdrawal fee through its other costs (such as monitoring and default fees). However, I don't think it's reasonable for Assetz to cover these costs by way of other fees which are not directly associated with processing withdrawal requests. I'm satisfied the costs associated with the withdrawal requests have been clearly evidenced by Assetz and I've seen no evidence to support that the monitoring and defaulting of loans has any bearing on the costs incurred by Assetz when processing withdrawals. Furthermore, an increase to the lender fee would impact Mr T even if he wasn't making regular withdrawals. So, I don't find there is a failing due to Assetz not covering the cost of all withdrawals.

I also understand Mr T feels Assetz are unfairly delaying his access to his funds. He says he only receives repayments on his loans on the first working day of the month and has suggested Assetz should allow one free withdrawal each month to align with his loan repayments. Whilst I accept that this option could be considered fairer, my role isn't to determine whether Assetz has provided the fairest option but rather to determine whether it has acted fair and reasonable in all the circumstances. And having considered everything above, I'm satisfied Assetz has acted fairly in applying the 90 days free withdrawal.

Overall, I'm satisfied that fee Mr T was to be charged was in line with the direct costs Assetz faced when completing withdrawals.

I appreciate Mr T feels strongly that he shouldn't be charged a fee to withdraw any cash funds from his account. But for the reasons set out, I haven't found Assetz at fault, so I don't require it to do anything further.

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 24 April 2025.

Ben Waites
Ombudsman