DRN-5224231

The complaint

Mr W 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 W opened an account with Assetz in June 2019 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 W raised a complaint with Assetz about the imposition of a charge for making withdrawals from the cash he held in his account.

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

- It closed its retail platform because of a sudden change to market conditions and an extended demand to withdraw cash from the platform. Without new loans being written there were no borrower fees to fund the platform, despite the significant ongoing operational costs which needed to be supported. To ensure a solvent run off, a lender fee was introduced.
- Introducing the fee ensures the cost of withdrawals is borne by those who directly created it. 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.
- The terms and conditions (T&Cs), relevant to when Mr W opened his account contain a section that explains Assetz reserve the right to charge for the direct cost of transferring monies back to lenders.

Mr W 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. He didn't uphold it. In summary he said:

- He 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.
- He was satisfied that it was fair and reasonable for Assetz to move forward with the wind-down plan they chose - including the lender fee, based on the forecasting of the cost of the wind-down. 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 T&Cs 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 W didn't accept the investigator's findings and asked for an ombudsman to reach a decision on his complaint. In summary he said:

- He believes the principle of charging investors to withdraw their own money to be perverse. He wasn't aware of this from the small print buried in the T&Cs, which should have been a clear bullet point upon application to the platform.
- It was Assetz's decision to close the platform, obviously investors have to withdraw their available cash funds and are encouraged to do so by the platform as soon as possible and therefore Assetz should bear the cost of it out of its profits.

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 reviewed the term which Assetz has relied on to introduce the withdrawal fee. The relevant term that was included when Mr W opened his account in 2019, in Section 10. Fees, interest, Capital Repayments and Broker Payments, states:

"*10.4. 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 what could lead to this imposition or 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 T&Cs, particularly as the secondary market closed permanently by the time this fee was introduced. Despite these concerns, I don't find them sufficient to reach a finding this complaint should be upheld. I will set out why below.

I think the context of Assetz's decision to wind-up its platform is relevant to my overall consideration of this complaint about the introduction of the withdrawal fee. 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 wind-up of the platform (including introducing a lender fee) 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. It has provided this service with information to support the options it considered and why it felt the impact on lender returns through an insolvent wind-down was significant, in support of the plan it followed 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 FCA's principles, and that looking at the circumstances as a whole, it has treated its lenders fairly.

Assetz has explained it's aims at the time was to ensure a solvent wind-up of the platform. So, I've considered the reasons given by Assetz for needing to introduce a withdrawal fee, bearing in mind it had already introduced a fee as part of the platform wind-up 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 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 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 customers' 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 W would be required to pay. Although I acknowledge it does mean he would potentially be leaving uninvested money on the platform not earning returns if he wanted to avoid the fee.

On balance, I'm satisfied there were reasonable grounds for why Assetz felt it was fair to introduce a withdrawal fee in 2024, despite not previously charging Mr W to remove money from the platform. The principle of charging those who use the service the most doesn't in itself suggest unfairness. Assetz also says part of its aim was to encourage investor behaviour that supports the solvent wind-up of the platform.

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 W 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. So overall, I'm satisfied that fee Mr W was to be charged was in line with the direct costs Assetz faced when completing withdrawals.

I note Mr W has raised a point about not being aware the T&Cs included the possibility of charging a withdrawal fee in the future. As explained above, the terms relevant to when he first opened his account did include this possibility. But I understand why Mr W wasn't expecting to pay to withdraw cash funds, as for the majority of time he held his account he hadn't needed to. But it is the specific circumstances surrounding the wind-up of the platform that meant Assetz felt it needed to rely on the terms to introduce the fee.

I also acknowledge that Mr W thinks that Assetz should cover the cost of withdrawals. I've already explained that I haven't found Assetz treated him unfairly in the decision it made about this fee as part of the solvent wind-up of the platform. The alternative would likely see increases to the lender fee, which would impact Mr W 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 appreciate Mr W 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

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 April 2025.

Daniel Little
Ombudsman