

## The complaint

Mr M complains about a fee Assetz SME Capital Limited (“Assetz”) has introduced to the accounts he holds on its peer to peer (“P2P”) lending platform. He believes he has been treated unfairly and requests that he is refunded the amounts he has paid towards the new fee.

## What happened

In February 2014, Mr M opened an account on Assetz’s P2P lending platform and over a number of years invested in several accounts – including the Quick Access Account (“QAA”), Manual Lending Account (“MLA”) and Great British Business Account (“GBBA”).

On 31 March 2020, Assetz informed Mr M that it would be introducing a fee that would be payable from 1 May 2020. The fee was charged at 0.9% per annum, which is 0.075% per month of the loans under management – not those in default. It was called a Lender Loan Servicing Fee (“LLS fee”). Assetz made the decision to stop charging the LLS around June 2021.

Mr M raised concerns with Assetz and sought clarity on the justification for introducing the LLS fee as he didn’t agree that it should be charged.

Assetz didn’t uphold the complaint and in summary it said the terms and conditions Mr M agreed to allowed it to introduce the LLS fee. It referred to a term that said it had the right to introduce a membership fee in the future and another term that it said to update the terms and conditions.

Mr M wasn’t happy with the response and so he decided to refer his complaint to this service for an independent review.

I issued a provisional decision in April 2025 and I include a copy below:

### ***What I’ve provisionally 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 Mr M’s complaint is about the introduction of a new fee on his crowdfunding accounts which was first charged in May 2020. I can see Assetz notified Mr M that it would be:*

*“..commencing a lender loan servicing fee of 0.9% per annum, which is 0.075% per month of the loans under management, starting on 1st May.”*

*In its justification for introducing the fee Assetz explained that:*

*“This fee is permitted in our terms and conditions, however we have never needed to implement it over the last seven years and we hope and expect it to be a short-term measure. It is also a fee that many other peer to peer platforms already charge even in normal market conditions, and our fee is lower than many of those in any case.”*

So, I've considered the terms and conditions that were relevant when Mr M first opened his Account with Assetz. These do explain that there's a possibility of charging a membership fee - the terms say under Clause Two (“C2”):

*“At present there is no membership or joining fee payable for being a Lending Member. The Assetz Capital Companies reserve the right to introduce a membership or joining fee in future.”*

But, Assetz updated its terms on 30 April 2020. This included the following term relevant to this complaint:

*“Under normal circumstances there is no membership or joining fee payable for being a Lending Member. The Assetz Capital Companies reserve the right to introduce a membership or joining fee in future. Starting on 1st May 2020 we will be charging a fee which will be referred to as the “Lender Loan Servicing Fee” until further notice. This fee will be 0.9% per annum, which is 0.075% per month of the loans under management. Our intention is that this will be a temporary measure whilst the current “Non-Normal Market Conditions” brought about by the Coronavirus (COVID-19) persist.”*

Within its final response letter to Mr M, Assetz referred to Clause 20 (“C20”) of its terms and conditions to demonstrate that the contract gave it the ability to make updates. The relevant term says:

*“20. Altered Circumstances and Changes to the Terms*

*If there is a change in circumstances or a change in the law, HMRC practice or regulations or the interpretation of them, or if any Assetz Capital Company wishes to make changes to the services which it provides on the Network or Website, the Assetz Capital Companies may amend these Terms from time to time as they think fit.*

*Where a change to these Terms does not affect existing Loan Units and does not disadvantage existing Lending Members or where the changes are reasonably believed by the Assetz Capital Companies to be in the interests of the Lending Members, the Assetz Capital Companies may make any amendments to these Terms at any time with immediate effect. Where it is necessary or desirable to make changes to these Terms which affect existing Loan Units or may disadvantage existing Lending Members, the Assetz Capital Companies will endeavour to provide 30 days notice before any changes take effect. Any such notice shall be posted on the Website.*

*Any amendments will be posted on the Website as soon as reasonably practicable. By continuing to use the Website, each Lending Member agrees to be bound by the amended Terms.”*

*In respect of Mr M's complaint, there are two relevant terms - set out above - which seek to give Assetz the ability to vary the contract. Under C2, the contract attempts to reserve Assetz's right to introduce a "membership fee" in future and under C20, it seeks to give a broader ability to make unspecified changes in relation to a wide range of circumstances.*

*To be clear, it's not for me to decide whether the terms Assetz has sought to rely on to introduce the LLS fee are lawful or whether there are unfair terms in the contract – that is something only a court can decide. But as a regulated financial business, Assetz is under an obligation to treat its customers fairly. And the obligation I am under is to consider what is fair and reasonable in all of the circumstances – which includes having consideration for the relevant law and regulations, regulators' rules, guidance and standards, codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.*

*Mr M entered into a contract with Assetz in February 2014 when he opened his first P2P lending account. At this time the relevant law under which the terms of a newly entered contract should be assessed is the Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCR 1999".) So, I've had regard for this legislation when considering this complaint. I note the following sections from the UTCCR 1999 that are of particular relevance to my consideration of Mr M's complaint about Assetz:*

*UTCCR 1999 Reg 4 says that the UTCCR 1999 apply to contracts between a seller/supplier and a consumer:*

*"4.(1) These Regulations apply in relation to unfair terms in contracts concluded between a seller or a supplier and a consumer."*

*UTCCR 1999 Reg 5 sets out how fairness should be understood:*

*"5.(1) A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.*

*(2) A term shall always be regarded as not having been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term."*

*UTCCR 1999 Reg 6 sets out how fairness should be assessed:*

*"6.(1) ... the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.*

*(2) In so far as it is in plain intelligible language, the assessment of fairness of a term shall not relate–*

*(a) to the definition of the main subject matter of the contract, or*

*(b) to the adequacy of the price or remuneration, as against the goods or services supplied in exchange."*

*UTCCR 1999 Reg 7 says that the language of the contract should be clear:*

*"7.—(1) A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language.*

*(2) If there is doubt about the meaning of a written term, the interpretation which is*

*most favourable to the consumer shall prevail but this rule shall not apply in proceedings brought under regulation 12.”*

*UTCCR 1999 Reg 8 sets out the effect of an unfair term:*

*“8.—(1) An unfair term in a contract concluded with a consumer by a seller or supplier shall not be binding on the consumer.*

*(2) The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair term.”*

*The UTCCR 1999 (in schedule 2) also sets out a list of terms which may be regarded as unfair – and says that terms which have the following effect may be unfair:*

*“... enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;”*

*But it also goes on to say (in schedule 2 2(b)) that some variation clauses in financial services contracts may be fair:*

*“...where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.”*

*In December 2018, the FCA published guidance FG18/7: Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015 (CRA 2015). While this guidance is focused on the CRA 2015, the FCA makes clear that the guidance is also relevant to the UTCCR 1999. I've also considered this guidance, but acknowledge it was published after Mr M entered into the contract with Assetz.*

*I note the following from Chapter 3 para 49 of this guidance – which has relevance to this complaint and Assetz's ability to fairly make changes to the contract:*

*“A reason which allows the firm to make changes to reflect changes to legislation, changes in regulatory requirements (including prudential requirements) or to reflect case law, is generally likely to be a valid reason.”*

*Taking into account the relevant law I have set out; I've considered whether the introduction of the LLS fee was fair and reasonable in all of the circumstances. In making this assessment, I've firstly thought about whether the terms Assetz's seek to rely on cause a significant imbalance in the parties' rights and obligations under the contract, to the detriment of Mr M.*

*When Mr M first entered the contract, my understanding is that there were no fees that were paid by lenders. He did have the ability to exit the contract, but this wasn't completely straightforward – because in order to release his funds from existing loan it would require a replacement lender to be available to take on his loan parts. In seeking to introduce the LLS fee, Assetz were introducing a fee that wasn't previously payable.*

*On face value, C2 would seem to immediately fall foul of UTCCR 1999, as it allows Assetz to unilaterally introduce charges without notice and without giving lenders the ability to terminate the contract. But I need to consider C2 in light of the whole contract – with C20 being relevant as this sets out how Assetz's could make changes more generally.*

*It appears Assetz sought to use C20 to amend C2 – as it did change and provide full details of the LLS fee in the updated terms it introduced in late April 2020. Looking at C20 some of the contents appears to align with the guidance set out in FG18/7 within the potentially ‘fair’ reasons for amending the terms – for example the reference to changes in the law, HMRC practice and regulations. But other parts of C20 – specifically the part that says Assetz’s reasons for making a change might include “change in circumstances... or if any Assetz Capital Company wishes to make changes to the services which it provides on the Network or Website” – appear to fall outside FG18/7’s potentially ‘fair’ reasons. So, this does raise concerns about fairness as it makes it difficult for lenders, like Mr M, to understand when changes might be made or the level of changes that might introduce new charges.*

*But Mr M’s contract with Assetz is open-ended. I note the following European case law from the case of Vertrieb – which acknowledged in open-ended contracts, the firm has a legitimate interest in being able to adjust the fees they charge. This says:*

*“the legislature recognised, in the context of contracts of indeterminate length... the existence of a legitimate interest of the supply undertaking in being able to alter the charge for its service...”*

*This opinion is also supported by the FCA guidance in FG18/7. So relying on C20 to introduce the LLS fee doesn’t automatically mean Assetz is treating Mr M unfairly.*

*A further consideration of fairness is whether the contract provides that notice of the variation/new fee should be given and, if not accepted, whether the consumer had the ability to dissolve the contract immediately. I’ve looked at what the terms said about what notice is given and the ability to leave the contract. In respect of notice the original terms say:*

*“Where it is necessary or desirable to make changes to these Terms which affect existing Loan Units or may disadvantage existing Lending Members, the Assetz Capital Companies will endeavour to provide 30 days notice before any changes take effect. Any such notice shall be posted on the Website.”*

*This indicates that only in some circumstances notice will be given and this is likely to be through updates to the website.*

*The ability for a lender to exit the contract is also covered. This says there are ways in which a lender could stop participating in this investment, but only one way in which a lender could free themselves. These are:*

- *Through transfer - Clause 8 says that a lending member could transfer their interest in a loan to another lender, which would bring the lender’s commitment to an end, thereby freeing the lender.*
- *Though termination - Clause 16 says that a lender may terminate their membership with immediate effect, but that “complete termination will only be possible if the Member does not have any current Loans outstanding” and that “Termination of a Lending Membership will not affect any outstanding Loans.”*

*This means while there is a general (and limited) ability to terminate the contract, there isn’t a specific power to leave in response to a variation.*

*The previously mentioned case law in Vertrieb says that a consumer must actually be able to exercise their power of termination – this says:*

*“With respect... to the consumer’s right to terminate the supply contract he has concluded in the event of a unilateral alteration of the tariffs applied by the supplier, it*

*is of fundamental importance... that the right of termination given to the consumer is not purely formal but can actually be exercised."*

*Mr M was given notice of the LLS fee on 31 March 2020 – which was a month before it started to be charged on 1 May 2020. But his ability to reject the change and end the contract was significantly impaired at the time. As previously mentioned, the ability to close a P2P account was dependent on other lenders taking on loan parts. But importantly, in late March 2020, Assetz had communicated to P2P lenders that abnormal market conditions was impacting the secondary market and the ability to make withdrawals. Effectively this meant at the time the LLS fee was introduced there was little prospect of Mr M being able to fully exit the contract and there was ongoing uncertainty around his ability to sell loan parts.*

*In my view, there is a strong argument to say that C2 and C20 cause a significant imbalance in the rights and obligations of Assetz and Mr M, to his detriment. In law, if significant imbalance is caused, then the term is unfair and cannot bind the consumer. The European case of Aziz (approved by the Supreme Court in ParkingEye v Beavis [2015] UKSC67) says. the court should consider what the consumer's position would be at law, if they hadn't entered into the contract:*

*"68 ...in order to ascertain whether a term causes a 'significant imbalance' in the parties' rights and obligations arising under the contract, to the detriment of the consumer, it must in particular be considered what rules of national law would apply in the absence of an agreement by the parties in that regard. Such a comparative analysis will enable the national court to evaluate whether... the contract places the consumer in a legal situation less favourable than that provided for by the national law in force..."*

*And - whether the business could reasonably assume the consumer would have agreed to the relevant term, if the contract had been individually negotiated:*

*"69 With regard to the question of the circumstances in which such an imbalance arises 'contrary to the requirement of good faith'... the national court must assess for those purposes whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations."*

*Contrary to COBS 6, when he first entered the contract, Mr M wasn't aware when the LLS fee might be charged or how much the LLS fee would be. Indeed, the information given at the outset suggested he would pay no fees, and there was no information about how any future fee might be calculated. It seems unlikely that a reasonable consumer would have agreed to an individually negotiated contract which left them vulnerable to fees of an unspecified amount, calculated via an unknown method, which could be introduced at the discretion of the business.*

*So, the evidence does point towards the likelihood that a court would find that both C2 and C20 are unfair under the UTCCR 1999. This scenario is covered in the UTCCR 1999 - Reg 8(2), says:*

*"The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair term".*

*I understand this to mean Mr M should be able to continue the contract without the relevant unfair terms – and would effectively mean Assetz couldn't introduce the LLS fee.*

*However, I'm not bound by the law – rather I must decide the complaint based on what is fair*

*and reasonable in all the circumstances of the case. Having done, so I'm minded to reach a conclusion that Mr M hasn't been treated fairly by Assetz.*

*I acknowledge that Assetz has provided some justification for introducing the fee in light of the market conditions caused by the impact of the global pandemic. I recognise Assetz has provided evidence that the abnormal market conditions did impact its operation and it sought to make changes to stabilise until normal market conditions returned. I've also had regard for the information provided to explain the additional costs it faced as a result of the pandemic – which do bear relation to the impact of the pandemic at a time when income was also suppressed. And as I've previously mentioned, Assetz did give notice of a month to Mr M ahead of the introduction of the LLS fee.*

*But overall, considering all of the evidence, I'm satisfied that it is not fair or reasonable for Assetz to introduce a new fee that changed the price of the contract – without giving Mr M the opportunity to reject this. The LLS fee introduced a new charge that Mr M was unaware of when he first opened his account – and had no reasonable understanding of when such a fee would be applied or how much it would cost him. I don't find the terms of the contract can be fairly applied to introduce this fee in the way that it was. The practical result of this conclusion is that I don't think it was fair or reasonable for Assetz to introduce the LLS fee to Mr M's account in May 2020*

### **Putting things right**

*As I've reached a conclusion that it wasn't fair and reasonable for Assetz to rely on the variation clauses in the contract to introduce a new fee, I need to decide how it should put this right.*

*I consider that my aim should be to put Mr M as close to the position he would probably now be in if LLS fee wasn't introduced. To do this, Assetz should refund him any reduction in the interest he received each month as a result of the LLS fee being applied (up until the LLS fee stopped around June 2021). I acknowledge that Mr M held several different accounts with Assetz, with varying interest rates, as such, the effect of the application of the LLS fee to each of these accounts will differ and the level of the reduction in his interest receive will vary between accounts. Therefore, I'm not asking Assetz to refund the LLS fee but rather the reduction in the interest he received as a result of the application of the LLS fee.*

*Had the LLS fee not been applied, Mr M would have had a larger amount of interest held in his account, as such, Assetz should also pay 8% simple interest from the date each LLS fee applied and up until the date of settlement.*

*Assetz should also provide a breakdown of these charges so he can clearly see where the LLS fees have affected his interest rate received.*

### **Responses to my provisional findings**

Both parties initially accepted my provisional findings.

Assetz made the following offer in response to my provisional findings:

- Refund of £1,742.45 in LLS fees that reduced the interest that otherwise would have been received. Assetz said the Mr M's MLA was the only account where this was relevant.
- Plus £656.79 simple interest at 8% from the date of each deduction up to 1 May 2025.
- So in total £2,339.24 was offered.

Mr M didn't accept this offer as he felt that LLS fees were also applied to Access Accounts, as well as his MLA.

I requested further information from Assetz regarding how the LLS fees were applied to the Access Accounts. Following this, Assetz provided a breakdown of the LLS fees on each of the Access Accounts during the period where the published Target Rates were not met. This amounted to £1,030.52. Assetz offered this plus £550 to cover the loss of interest in addition to the previous offer made.

Mr M didn't accept the offer. He explained that the target rates for the Access Accounts were a cap, whereby lenders could never receive more than the stated rate but could, and often did, receive less than the target rates. He said Assetz had full control of the target rates and reduced them at will, so it would be entirely wrong to say he did not suffer a loss if the target rate was met as that rate was controlled and manipulated by Assetz.

As such, he felt the loss should be calculated as the delta between the target interest rates prior to lock-in versus the target rates during the lock-in on the balance in each Access Account during the lock-in period, plus additional amounts when the target rates were not paid (plus compound interest at 8% per annum up until the date of payment). He also felt compensation should be paid for his time and inconvenience in raising this matter.

As Mr M didn't accept the offers made, the complaint has been passed back 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.

Having done so, I'm satisfied Assetz's offers are fair and reasonable in all the circumstances. I'll explain why.

I understand Mr M believes Assetz's offer should take into account that it was able to reduce the level of interest his accounts received and that it would be fairer to base any offer calculation on the interest rates he was receiving prior to what he refers to as the lock-in period. However, I don't think it would be fair to ask Assetz to make an offer on that basis. I say this as Assetz has, throughout the period Mr M has been an investor, made it clear that the target interest rates for his accounts were, by their very nature, only targets and were not guaranteed rates of interest. I've seen on Assetz's website that it sufficiently warned investors that target interest rates for accounts were capped and that the actual returns could be lower.

As explained in my provisional findings, the fee subject to this complaint was introduced during a period where Assetz was not operating in normal circumstances, due to the onset of the global pandemic. Therefore, it's not unsurprising that target rates for his accounts would have been impacted by this. I appreciate that Assetz had full control over the interest rates applied to his accounts, however, I've not been provided with any evidence to demonstrate that Assetz has unfairly applied such rates.

I remain satisfied that the outcome I reached in provisional findings are correct and I'm persuaded that Assetz's offers fairly compensate Mr M for the impact of the LLS on both his MLA and Access Accounts, although it will be required to update the interest calculation in line with the date of settlement.

## **Putting things right**

To fairly compensate Mr M, Assetz should do the following:

- Refund £1,742.45 in LLS fees that reduced the interest that otherwise would have been received on his MLA. Plus simple interest at 8% from the date of each deduction up to the date of settlement.
- Refund £1,030.52 in LLS fees that reduced the interest that otherwise would have been received on his Access Accounts. Plus simple interest at 8% from the date of each deduction up to the date of settlement.

## **My final decision**

My final decision is that I uphold this complaint and direct Assetz SME Capital Limited to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 December 2025.

Ben Waites  
**Ombudsman**