

complaint

Mr E complains that Assetz SME Capital Limited didn't carry out sufficient checks on the security he was told was available for a peer to peer (p2p) loan he invested in. When the company was unable to pay back this loan, he was told there was insufficient security available to compensate him.

background

In January 2016 Mr E invested £5,000 in a p2p loan that was offered on Assetz's platform. The loan was to fund the expansion of a trade finance company which I'll refer to as 'Company A'.

Before investing, Mr E had sight of a number of documents which gave him detail around Company A's financials, its purpose for the loan and any other risks. The documents available also outlined what security Assetz had over any assets owned by Company A, and their valuation at the time. Assetz was not required to advise Mr E.

Unfortunately for Mr E, Company A ran into difficulties before the loan was paid back. And when Assetz tried to enforce the security it had over Company A's assets, it was insufficient to pay back investors.

Mr E complained. One of our investigators looked into Mr E's complaint but didn't think it should be upheld. In summary:

- She was persuaded Company A's pitch was fair, clear and not misleading and considered that Assetz had done what was required to verify the claims made in the pitch.
- The debenture of a third party's asset (a mine abroad) was in place at the time of Company A's pitch, but it wouldn't have been possible for Assetz to have verified the value of the mine. Ultimately this was an asset owned by one of Company A's debtors, and she considered had Assetz correctly verified that Company A had protected itself by having a charge over it.
- She thought Assetz had appropriately warned Mr E of the risks of investing in this type of loan.
- She concluded that the credit report had clearly highlighted the many risks associated with Company A, including the fact that it had no fixed assets of its own. She thought it was clear from the credit report that Company A's ability to remain solvent was dependent on its invoices being paid, and this was a significant risk of lending to Company A. It was for Mr E to satisfy himself that he was happy to take on that risk in light of this information.
- She thought the financial information available to Mr E ought to have alerted him more generally to the risks associated with lending to Company A – and she considered this information was fair, clear and not misleading.

Mr E didn't agree. In summary, he said that he was misled into investing into a high risk loan, and was misled as to the value and nature of the security that was advertised. He said the loan was promoted to him on the basis of it being 'secured', but it wasn't. He said the loan to value ratio was misleading. And he said that in his view, the word security meant 'a thing deposited or pledged as a guarantee of the fulfilment of an undertaking or the repayment of a loan, to be forfeited in case of default'. He said that this loan didn't have any security in place, despite Assetz saying it did.

Mr E also said that after this loan defaulted, he was told by Assetz that it no longer promoted non-property secured loans anymore due to the risk involved. He thought this demonstrated that he had been misled into investing in this loan and had been treated unfairly.

As agreement couldn't be reached, the case was passed to me to decide.

my findings

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've reached the same conclusions as the investigator and for broadly the same reasons.

I think it's important that I emphasise to Mr E that I fully understand why he believes his complaint should be upheld, and I do sympathise with the size of the financial loss he has experienced as a result of lending to Company A. But my role is to decide matters impartially, and on the basis of what is fair and reasonable in all the circumstances of the complaint – and this includes what information was readily available to him at the time of the investment.

Whilst I appreciate he may have chosen to give more weight to some aspects of what he was being told than others, I need to decide whether it was fair and reasonable, in the particular circumstances of this case, for Assetz to have approved this particular promotion – including taking into account to what extent overall, the promotional material was fair, clear and not misleading. And, in particular, where that information was clear about Company A's prospects of repaying the loan. This is what the regulator required Assetz to satisfy itself of before approving the promotion. It wasn't for Assetz to make a decision on Mr E's behalf, or give him advice about whether lending to Company A was the right thing to do. Assetz needed to ensure, among other things, that whatever information Mr E was being given, it wasn't misleading him into thinking the loan was safer than it really was. And so this is the first thing I've needed to address.

The second issue to consider depends on my conclusions above. If I consider that Mr E was in fact misled because Assetz didn't carry out sufficient due diligence on the information available, then I need to consider what Mr E would've done had he been given the right information.

Much like the investigator has done, in addressing the first of these questions above I've paid particular attention to the credit report that was available to Mr E at the time. I think this document is key and I'd expect an investor to have paid close and very careful attention to it. That isn't to say that the other documents weren't equally important – I can see a long list of other documents such as balance sheets and profit and loss data for various years. And I've seen that the investigator has referred to this information in explaining to Mr E other reasons why he ought to have been aware of the risk of lending to Company A. But I've focused on the credit report because it encapsulates and distils key information, including the purpose of the loan, Company A's business model and key risks to its ability to repay what it owes.

Company A's model essentially involved purchasing goods on behalf of its clients against confirmed orders. It had processes in place to mitigate the risk of default by its clients, and these included relevant insurance coverage as well as a limit on its overall financial outlay in the purchase of goods.

The report explained that the loan of £1 million was sought with a bullet repayment after two years – or roll over subject to its expected growth and demand. Indeed I can see the report makes the possibility of Company A seeking further loans in the future very clear.

In the section called 'security', which I understand was Mr E's key concern, I find the information about what security was available to be clear. I appreciate Mr E's complaint that the advertised loan to value (LTV) suggested a level of security he says later transpired to be inaccurate. But I'm satisfied the report explains clearly what security was in place.

Assetz had a first debenture over Company A's assets – and these included 'stock, cash and debtors'. And I think it was clear that it was the combined value of these assets at the time which suggested a particular LTV. At the time, there was no suggestion that the security included fixed assets that might hold a particular or intrinsic value. For example the credit report makes it clear that Company A didn't in fact have any 'fixed assets'. So I don't consider this information was misleading Mr E into thinking there was security when there wasn't. I think this information clearly outlined that Assetz did have security in place, what it was and what it was worth. It was for Mr E to decide whether that was sufficient for him to still proceed with the loan.

And it's on this issue that I'm not persuaded by Mr E's submissions. His definition of security is precisely what was in place for this loan. A security doesn't have to be, for example, property – and property itself can have fluctuating values and depends on the property being sold at a particular price in order for it to properly compensate consumers for a defaulted loan. The point is that Mr E shouldn't have relied on the security being in place to essentially conclude that this was an investment that carried no risk to his capital – that it was guaranteed. I don't think it was reasonable, in light of all the information available, for him to think this was the case. And I'm not satisfied that Assetz misled him into thinking this.

Instead, in reading the information that was available to Mr E at the time, I'm satisfied that it was reasonable for him to have understood that the value of the debenture which Assetz had secured against Company A's assets was likely to fluctuate – and that it would depend on precisely when that security would be called on. And whilst I can see a covenant was in place to ensure the value of that security remained at a certain level, it's clear to me that Company A's business model would be heavily reliant on its month to month debtors continuing to pay it on time. I think this aspect of lending to Company A was clear and ought to have been taken into account by Mr E when he was assessing, for himself, the risk of investing in this loan.

I'm not persuaded there's anything in this report that was misleading. I don't think it was misleading for an LTV to be advertised, because after all Company A did have assets in place – and Assetz did have security over them. But crucially, it was for Mr E to decide whether or not the nature of that security was such that he was satisfied investing in the loan was a risk worth taking – bearing in mind the overall nature of this type of investment meant that it carried a degree of risk that the loan would not be paid back. I'm not persuaded any of the information provided to Mr E misled him into thinking this loan was guaranteed, or that he ran no risk of losing his money.

In my view, it was for Mr E to decide whether he wanted to lend to a company that had no fixed assets and which had a number of large debtors on whom its business model essentially relied. I think all this information was clear and available to Mr E, and appropriately highlighted. In my view, if having property backed security was something that

was key for him at the time, he ought to have concluded that this investment was not appropriate for him.

I acknowledge that it later transpired that one of Company A's largest debtors was unable to pay back its debt to it. And, worse, the security which Company A had over the fixed assets of this debtor (a mine located abroad) couldn't be realised in order to pay the debt back. To be clear, this wasn't Company A's asset at the time this loan was being promoted. This was an asset owned by a third party, over which Company A had a charge. The value of this asset wasn't something which Assetz could've done any due diligence over – and it wasn't used to calculate the LTV of this loan, only the debt owed to Company A by the company that owned the mine was.

The point here is that it was apparent from the promotion and the information available, that this was a key risk of Company A's business model – and something that Mr E ought to have taken into account when deciding whether the interest rate he was receiving on the loan was worth the risk he was taking.

When this debtor was unable to pay back Company A, it transpired that value of the mine was worth significantly less than anticipated. This meant that the debt owed to Company A couldn't be paid back, and was one of the reasons that caused Company A to go into administration and ultimately default on the loan.

Whilst I have huge sympathy for the fact that Mr E lost his investment as a result, I consider Assetz fairly and reasonably ensured Mr E had all the information he needed in order to make his decision to invest. I consider that from the documents available, it was clear that unpaid debts was the single most significant risk facing Company A's financial stability and its ability to repay the loan. For all these reasons, I'm not persuaded it would be fair and reasonable to require Assetz ought to pay any compensation.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 April 2021.

Alessandro Pulzone
ombudsman