complaint

Mr F 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 his loan, he was told there was insufficient security available to compensate him.

background

In January 2016 Mr F invested £10,000 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 F 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 F.

Unfortunately for Mr F, 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 F complained. One of our investigators looked into Mr F's complaint but didn't think it should be upheld.

In short he said:

- Assetz didn't provide any advice to Mr F about whether or not to proceed with investing in the loan.
- Assetz was required to ensure that the information about the loan was fair, clear and not misleading. To that effect, the investigator considered that the credit report that was available to Mr F was very clear about what assets Company A had, and what the risks were to lending to it.
- In particular, the investigator considered that the report was clear that Company A did not in fact have any assets of its own – and that the security was therefore over debts and potential other debentures, in particular in relation to one large debtor.
- At the time of the loan, one particularly large debtor held a mine that appeared to have considerable value. But Assetz wasn't required, nor could it be expected, to carry out due diligence on the assets of a company that wasn't directly a borrower. It unfortunately transpired that this large debtor was unable to repay the debt owed to Company A. Company A's administrators subsequently concluded that the mine was in fact worthless.

Mr F didn't agree. He said it was 'both unfair and misleading to advertise a loan stating asset cover is in place to a LTV percentage' only for investors to then find out that was worthless. He said 'no company should hide behind their terms and conditions to the detriment of their customers'. He said that Assetz made money from the deal and couldn't absolve itself from paying compensation. He also said that as it had made 'several loans to the same client, therefore it is not unreasonable for investors to assume they were in fact satisfied this loan did have bona fide realisable assets in the event of failure'. He also thought it wasn't fair that investors were essentially comforted by the fact that they were dealing with an FCA regulated firm, when all that firm had to do was 'hide' behind its terms and conditions in order to protect itself from paying compensation.

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

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.

Having considered the evidence, I think there are two main issues in this case which require consideration.

The first is 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 the promotional material was fair, clear and not misleading about Company A, and in particular, about its 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 F's behalf, or give him advice about whether lending to Company A was the right thing to do. But what it needed to do was ensure, among other things, that whatever information Mr F was being given, it wasn't misleading him into thinking that the loan was safer than it really was.

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

In addressing the first of these questions, I've paid particular attention to the credit report that was available to Mr F 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. But the credit report 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 F's key concern, I find the information about what security is available to be clear. I appreciate Mr F'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 F 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 F to decide whether that was sufficient for him to still proceed with the loan.

And I think it was also reasonable for Mr F to have understood that the value of the debenture which Assetz had secured against Company A's assets was likely to fluctuate – after all it would depend on when that security would be called on. Whilst I can see a covenant was in place to ensure it 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 F when assessing the risk of 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. It was for Mr F 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 Mr F was ever given a guarantee that this risk was entirely mitigated.

Mr F was deciding for himself whether this loan was a worthwhile investment. If ensuring that there was sufficient ongoing security to cover the loan was important for him, I think this ought to have prompted him to conclude that this investment was likely too high risk for him.

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. 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, because it wasn't an asset that was owned by Company A at the time of the promotion – 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 F likely took 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 F lost his investment as a result, I consider Assetz fairly and reasonably ensured that Mr F 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 F to accept or reject my decision before 23 April 2021.

Alessandro Pulzone
ombudsman