

## **complaint**

Mr M complains that Assetz SME Capital Limited ("Assetz") failed to carry out adequate due diligence on the financial health of a company that he agreed to lend to.

## **background**

In or around September 2014 Mr M took a £3,000 holding in a loan of £480,000 to a limited company.

In October 2014 Assetz emailed Mr M in respect of his loan holding to say that the limited company concerned was looking for a further loan of £300,000. It then said that rather than providing a second loan of £300,000, it had taken the decision to make one single loan of £780,000 available (subject to member funding) and for the original loan to be repaid.

Mr M elected to take a holding in the new loan and to have his holding in the original loan repaid. Mr M was under no obligation to take a holding in the new loan and could have simply had his original loan holding repaid.

In November 2014 Mr M's holding in the new loan was funded by the settlement of his original loan holding of £2,888.70 and £111.30 cash he had on account. This meant that Mr M had a £3,000 holding in the new loan.

In January 2015 the limited company concerned ceased trading and it appears that Mr M will only receive back in the region of 50% of his November 2014 loan holding.

This complaint was considered by one of our adjudicators who came to the view that it shouldn't be upheld. In summary she said she was satisfied that Assetz had done nothing wrong and ultimately it was Mr M's decision to do what he did.

Mr M disagreed. Therefore the matter has been passed to me for review and decision.

## **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 overall conclusions as the adjudicator and for broadly the same reasons. There is also very little I can add to what has already been said.

It's clear Mr M has very strong feelings about Assetz's actions. He has provided detailed submissions in support of his complaint which I can confirm I've read and considered in their entirety. However, I trust that Mr M will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

The role of Assetz is to perform an administrative role in relation to bringing together prospective borrowers and lenders through the operation of a website. The member's agreement sets out the terms and conditions forming the basis of the relationship between Assetz and its lending members.

At page one this agreement says:

*"[Assetz] do not offer any investment advice or recommendation in relation to lending proposals appearing on this Website. Whilst [Assetz] offers support to the Lending Members by way of the provision of credit reports as part of the lending process, no charge is payable by the Lending Members for this service and it is offered without obligation or liability on the part of [Assetz]."*

*"Any lending made through the Network is made in the sole discretion and at the entire risk of the Lending Members. Before you become a Lending Member, we strongly recommend that you seek independent financial advice."*

At various other pages the agreement says, amongst other things:

*"Lending opportunities will normally be supported by way of a credit report prepared by [Assetz] describing the opportunity and providing background information which may refer to business plans, information on security, past accounts and other documents relevant to the opportunity."*

*"Lending Members retain complete control and discretion over whether or not to enter a Bid and on what terms."*

*"[Assetz doesn't provide] any investment advice. Nothing that [Assetz] does in operating the Network (whether on the website or otherwise) is intended to constitute advice or a recommendation to enter into a loan. The Lending Members are responsible for obtaining their own independent financial advice before making any lending decisions."*

*"[Assetz] will use reasonable care to ensure that the information provided by it is accurate and clear, [Assetz doesn't accept] any responsibility or liability for:*

- a) The adequacy, accuracy and/or completeness of any information about any Borrower, any Loan or any associated security made available to a Lending Member or prospective Lending Member through the Website or otherwise; or..."*

I've also considered the credit report (and supporting documentation) provided by Assetz in respect of the £780,000 lending proposition. I've not considered anything Mr M might have been provided with in respect of the £480,000 lending proposition. This is because Mr M suffered no loss in respect of this proposition, having received repayment of his loan capital in full.

The credit report in respect of the £780,000 lending proposition states, on the opening page:

*"The information contained in this credit report has been provided by the applicant who has declared it complete and correct. [Assetz] has not conducted an audit and provides no warranty as to the accuracy of the information. [Assetz] gives no recommendation or advice in relation to this loan application and investors should seek their own advice before bidding."*

Given the above it's my view that it ought to have been clear to Mr M that any decision to lend was his and his alone and that the checks undertaken on the company by Assetz weren't necessarily very extensive, it relying in the main on information provided by the company itself.

Therefore for me to uphold Mr M's complaint I would need to be satisfied that Mr M suffered loss and damage as a result of gross negligence, or wilful misconduct, on the part of Assetz.

I note that Mr M believes Assetz was grossly negligent. But this is a high bar to meet and I'm simply not persuaded that it has been.

In my view Assetz was entitled to rely on the information provided by the company and its agents, which included financial accounts as filed at Companies House (for the years ending March 2014 and March 2013), management accounts to June 2014 and an independent valuation of the property owned by the directors, when putting together the credit report.

I'm also satisfied that this report makes it clear what security Assetz was looking to take (or had taken) and that it didn't act negligently in assessing what value might reasonably be attached to that security (and why). Indeed, I note that Assetz itself suggested that the security it was looking to take (or had taken) might well be insufficient (at least initially) to cover the proposed lending.

Therefore in the particular circumstances of this case I'm not persuaded Assetz did anything wrong.

### **my final decision**

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 June 2016.

Peter Cook  
**ombudsman**