

## **The complaint**

Mr C complains about the way Assetz SME Capital Limited administered his Peer-to-Peer (P2P) lending accounts. He complains about a transfer of his invested funds in his 90 Day Access Accounts (90DAAs) without warning and without his consent, and the failure to reinstate the funds when requested.

## **What happened**

Mr C has invested in several accounts on Assetz's P2P lending platform and over a number of years. Two of the accounts were 90DAAs, a standard account and an ISA.

In early April 2021, Mr C made a number of pending withdrawal requests from both his standard and ISA 90DAAs, totalling over £450,000, which following the notice period would be placed for sale and when sold, funds would be paid into his cash account.

On 9 April 2021 Assetz emailed P2P lenders – including Mr C - with an update that included details of an Automated Operating Level (AOL) relating to the Access Accounts (AAs).

On 7 June 2021, Mr C's pending withdrawal requests were actioned immediately as the AAs investment passed the Maximum Supported Level (MSL). Mr C was sent an email at this time headed "An important update regarding the Access Accounts".

Mr C understood his accounts had a 90 day notice period before the funds would be made available for sale. But when he logged on to his account in June 2021, he noticed that large sums were leaving his 90DAAs and the funds were appearing in his cash account. As he wasn't expecting to have any funds transferred until the notice period had passed, he contacted Assetz to ask for the funds to be reinvested but was told they couldn't be. He tried to reinvest the funds by returning them to his 90DAAs, but the vast majority of the cash was shown as awaiting investment and not earning interest. After this he decided to withdraw his funds from Assetz over the following week.

Mr C raised a complaint as he was unhappy that his invested funds had been moved from an interest-bearing account, without warning and without his consent. He was also unhappy because of Assetz's failure to reinstate the funds immediately after the transfer came to his attention – despite his request for this to happen.

Assetz responded to the complaint but didn't uphold it. It said:

- The AAs are designed to automatically adapt to market conditions and levels of cash within the accounts. At the point the accounts pass the MSL, the automated system will take a number of actions in order to reduce the excess cash – this includes all pending withdrawals being actioned immediately.
- Mr C had pending withdrawal requests on his standard and ISA 90DAAs which were requested in April 2021. All of these pending withdrawal requests were actioned immediately, in line with the process, on 7 June 2021, when the AAs passed the MSL. This was an automated process, and it had no control over the time the MSL was breached. An email was sent to all lenders affected by the change in the AOL as soon as it became aware.

- Given that it informed all lenders of the mechanics of the AOL on 9th April 2021 and its records show Mr C received the email and opened the specific information regarding the AOL, over 8 weeks prior to the AAs breaching the MSL, it didn't find it had had done anything wrong by returning funds to Mr C's cash account.

As Mr C didn't agree with the explanation given, he referred his complaint to this service for independent review. One of our investigators looked into the complaint. He didn't uphold it.

In summary he said:

- Assetz provided information to Mr C in April 2021 that explained the changes it was making to the operation of Access Accounts - including the impact of cash levels reaching the MSL and if this level was reached any withdrawal requests would be actioned straightway in order to reduce the cash balance.
- Mr C had outstanding withdrawal requests pending on 7 June 2021 when the MOL was reached, therefore the sales were actioned and his funds were transferred to cash.
- He acknowledged Mr C's frustrations but viewed the withdrawal requests to be actioned in line with the business' process at the time. He didn't find evidence to suggest Assetz needed to obtain consent to carry out the withdrawal request.

Mr C didn't agree with this response and requested an ombudsman reach a decision on his complaint. He provided further submissions. In summary he said:

- When he reviewed Assetz's 9 April 2021 update about the AOL, he was satisfied that he could continue his practice of giving and cancelling withdrawal requests without hindrance.
- Within this update, Assetz also explained a new withdrawal fee that would apply. The information about this fee distinguished between the notice period in the AAs and the period when the investor has a withdrawal request. This informed his consideration of the rest of the email and the AOL web page – and formed his understanding that there was a difference between the notice period and when a withdrawal is being processed.
- He now understands Assetz's AOL system was designed to return funds to investors whilst they were in the relevant notice period as well as when subject to a withdrawal request. But he had left open requests on notice because the updates made it clear to him that they would not be at risk of the AOL dumping them out.
- He was reassured by the 7 June update as this referred to a proportion of his cash in the AAs being returned – and it would only "slightly reduce" his total AA investments. He had no problem with a slight reduction in his investment, especially as he was being told that it would be pro-rata with other investors. But there was nothing in the email to suggest his investments on notice in the 90DAAs, would be materially affected.
- The Consumer Rights Act 2015, under Section 69, requires any term in the contract which could have different meanings to be given the meaning most favourable to the consumer. He trusts that the Ombudsman would consider it fair and reasonable to adopt that approach in the circumstances of this complaint should there be any doubt about the meaning of the emails or web pages.
- The terms and conditions are an essential part of the contractual relationship in his Assetz, but he does not consider that the terms and conditions shed any additional light on his complaint which is very straightforward and effectively self-contained.
- He made strenuous efforts to contact Assetz to resolve the issue but got no response. When he did get a response and invited Assetz to put the matter right he was roundly rebuffed.

## 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.

Mr C's complaint relates to the way funds in his 90DAAs were returned to his cash account. I understand these products were originally designed for investors who wanted the possibility of accessing their money within a fixed time frame with the 90DDA offering a higher target interest rate because you have to wait a bit longer for your money. And in normal market conditions an investor will usually get access to their money 90 days after the request to withdraw it. But following the impact of the onset of the global pandemic in March 2020 there had been various changes to the operation of accounts to help with liquidity issues due to the market conditions.

Relevant to this complaint is the update Assetz sent to Mr C on 9 April 2021, which provided information about further changes to the operation of AAs. I've reviewed and considered the contents of this update. It is broadly about learnings from COVID-19 and covers the liquidity issues and move from normal market conditions in March 2020. It then goes on to discuss improvements going forward that will be made to the AAs – and makes the following statement:

*"...We are further improving the operation of the AAs to automatically adapt to market conditions and levels of cash within the accounts. The AAs will operate differently depending on the amount of cash held within them and will fall into one of the following categories: Minimum Operating Level, Funding Commitments Met Level and on or above the Maximum Support Level.*

*To help you understand what that means for you and your investments, and to increase transparency, we've explained on a dedicated web page how each of the levels work and the amount of liquidity you should expect going forward."*

Assetz provided a link to its website which gave further information regarding the AOL. This explained how the AAs are designed to automatically adapt to market conditions and levels of cash within the accounts. It went on to say how the AAs will operate, depending on the amount of cash they hold in Normal Market Conditions and also in non-Normal Market Conditions in the presence of a withdrawal queue. It provided a table with the different levels of funding. The part of relevance to this complaint is when the maximum level is reached. Assetz explained the following about the MSL:

*"Maximum Supported Level*

*The Access Accounts will become over-funded and exceed the Maximum Supported Level if they hold too much cash. This is because the accounts seek to pay the target rate on both the cash portion of funds and the amount that is invested in loans. Therefore, if cash levels become too high, it will become more difficult to pay the target rate from the loan interest received from borrowers and will significantly reduce any surplus loan interest to the Provision Funds. Therefore, when the AA cash balance exceeds the Maximum Supported Level, the accounts will automatically take steps to reduce it. In this scenario, the Access Accounts would be closed to new investment until they are operating below the Maximum Supported Level. This includes both new funds invested on the platform and the reinvestment of interest and capital, which would be diverted back to an investors cash account. Withdrawal requests would be satisfied immediately using the AA cash balance and it's also possible that any further excess funds may be periodically repaid to lenders on a pro-rata basis, based on their total AA holdings."*

By mid-2021, Mr C had developed a strategy which he had employed following the liquidity issues that had occurred over the previous year impacting withdrawals. He has explained he had substantial investments in the 90DAAs, and while he intended to keep his funds invested, he was aware of the liquidity difficulties which had led to queueing in the 90DAA after the 90 day notice period had expired. So, he decided on giving notice on the majority of his holdings in the 90DAA and then cancelling this notice before it expired. He made the requests in tranches, meaning he always had a proportion of his investment serving notice which, if necessary, could be called on by not cancelling the notice. Essentially this allowed him to minimise the time in any withdrawal queue there may be. He says the sole reason for giving notice in this way was out of abundance of caution should he need to call on part of his investment in the 90DAA. But as it turned out he didn't need access to his funds.

So, as I understand it, Mr C's strategy was designed to give him flexibility to withdraw his investment should he need to and minimise the risk of being stuck in a queue. However, what actually happened wasn't what Mr C was expecting. This was because on 7 June 2021 the MSL had been reached, and Assetz proceeded to automatically process open withdrawal requests in the 90DAAs. The requests Mr C had open still within the notice period were processed and funds moved to his cash account. While Assetz did email Mr C on 7 June 2021 to explain the AAs were overfunded, this initially didn't make him think his withdrawals had been processed, it was only after viewing his account he noticed funds had moved.

Assetz argue that it has done nothing wrong. It says the actions it took were in line with the information it provided to Mr C in April 2021 about the improvements it was making to the AAs. It says the system is automated, so as soon as the MSL was reached the pending requests were actioned – including Mr Cs. It says as it was an automated process, it was unable to prevent or reinstate the funds as Mr C requested.

Mr C disagrees. He says the information he was given didn't alert him to the possibility of his funds being de-invested before the notice period ended. Rather, he was reassured by the information Assetz provided that he would still able to follow his intended strategy without hindrance.

#### *Did Assetz do anything wrong?*

I've reviewed the available evidence to look at whether Assetz misled Mr C and reassured him pending requests from 90DAAs that would in the notice period wouldn't be impacted by the AOL. The information that was provided in the April 2021 update and website link does explain the reasons why Assetz was making changes to help the AAs adapt to changing market conditions. There is some evidence that Mr C was informed of the possibility of his withdrawal requests being satisfied before the notice period had ended. This information is contained on the MSL section of the website – this says where the maximum level has been reached *"Withdrawal requests would be satisfied immediately"*. I note that the information provided doesn't cover the specific circumstances of the way Mr C was using his accounts to request and cancel withdrawal in the notice period. But equally the strategy Mr C was following wasn't something, in my view, that Assetz expected account holders to follow in the usual operation of the 90DAAs.

I've noted Mr C's comments that the information within the updates gave him the impression he would be able to continue with this strategy unaffected. He has pointed to the information given about the new withdrawal fee which he says differentiates between funds being withdraw and funds on notice to withdraw. I note in this section of the update Assetz did explain *"you **will not be charged a fee whilst serving the notice period in the 30 Day and 90 Day Access Accounts.**"* And this supported Mr C understanding there was a difference

between the active withdrawal requests and notice periods. Although this information came from the section regarding a new fee, Mr C has argued this also applied to the information about the AOL. He has also said as withdrawals requests aren't defined, he understood this term to only relate to active requests. This in turn has led to him to interpretation on how the MSL would operate to differentiate between notice and active requests.

Having considered all of the points Mr C makes here, I don't agree the information provided by Assetz is misleading. He says it was reasonable for him to understand from the information provided that the reference to withdrawal requests being actioned immediately in the MSL section didn't relate to requests that were still in the notice period. But I think it is important to consider the context of the information in the section titled 'Access Accounts' and the linked website page. I refer specifically to the parts relating to the MSL, including the overall message about overfunding and holding too much cash. Mr C has given an explanation as to why he interpreted the April 2021 notice in the way he did. It seems he relied on a separate fee section to establish his pending requests would be unaffected by the AOL. Having read the update, while overall they relate to AAs, the two sections are standalone and I don't think it was Assetz intention for them to be read in conjunction as there is no clear link to say they should be read together. So, while I acknowledge why Mr C came to the conclusion he did, I don't agree it's reasonable to use information from the fee section to support that Assetz provided misleading information about how the MSL would operate.

I've also considered Mr C's comments that the 7 June 2021 update didn't give him an understanding that his withdrawals would be or already had been actioned. This was an update to all investors in the AAs. It gave information about there being no capacity to accept new invested funds and a proportional returning of cash to all investors due to the overfunding. It doesn't address the scenario where investors, like Mr C, had pending withdrawals. Mr C interpreted this to mean his withdrawals were unaffected by the over funding. In light of his interpretation of the April 2021 update, it is understandable why he came to this conclusion. But again, I don't think this meant Assetz misled him. Whilst the actioning of his withdrawal was linked to the funding position, Assetz has explain the processing of the withdrawals was automated based on the MSL being reached. But I don't think the fact there was no specific notice given means Assetz has acted incorrectly in processing the withdrawals.

I've reviewed the terms and conditions that form the basis of the relationship between Assetz and Mr C. But I haven't found the specific circumstances regarding the issues subject to this complaint are covered explicitly. Indeed, in Mr C's submissions, he concedes that the terms and conditions do not shed any additional light on his complaint. Mr C says any term in the contract which could have different meanings should be given the meaning most favourable to the consumer. I'm not persuaded that in the circumstances of this complaint, there is a term that has been given a meaning that is unfavourable to consumers. In my view, the issues here relate to a genuine misunderstanding of the April 2021 update, but for the reason given, I don't think Assetz is at fault for this.

I've also considered the broader picture of the what happened - and I'm conscious of the fact Mr C did make requests to withdraw funds. At the time the MSL was reached Mr C had outstanding withdrawal requests that had been on notice for around 60 days. Without explicit knowledge of his strategy to cancel, this would suggest he was intending withdraw funds – and he had been waiting for the notice period to expire to do so. While I appreciate that he didn't necessarily intend to withdraw and instead cancel during the notice period, this doesn't stop the fact an intention to withdraw had been made. So, on face value, and as far as Assetz was aware, Mr C wanted to withdraw his funds when he made the requests in April 2021. While things didn't work out as Mr C intended, I don't think this necessarily means Assetz must be at fault for this. He was attempting to operate his account in a way that

wasn't in line with the expected operation – i.e. you would only make a withdrawal request if you intended to actually withdraw funds. If Mr C had intended to stay invested, the only way he could achieve this would be not to make withdrawal requests. I understand the reasoning behind the strategy he adopted, but this wasn't something Assetz directly influenced or encouraged him to do. I think it is reasonable Assetz didn't cover the scenario where investors may be looking to cancel withdrawals in the notice period. While it is possible investors could change their mind and cancel a request, this isn't an expected behaviour but what I view as an exception. So, it doesn't surprise me that clearer information wasn't provided on this.

As I haven't found Assetz did anything wrong here processing the withdrawals, I can't say it acted unreasonable by not reinstating the money or putting things right as Mr C requested. So, while he is unhappy about this, as I haven't found Assetz made an error I don't think it acted unfairly by not doing what Mr C asked it to. I appreciate Mr C feels strongly that his queries and attempts to get funds reinstated weren't dealt with correctly when he first raised the matter. I acknowledge that he was unable to make contact when he first noticed the funds had moved due to telephone lines being closed and the subsequent refusal to reinstate funds when he did make contact the next day. But as I haven't found that there was a failing by Assetz, I don't find there was a further failing by it not reinstating the funds or acting on the instructions Mr C gave when he first notice the funds in his cash account.

In conclusion, I haven't found that Assetz is at fault or has treated Mr C unfairly by the actioning of the withdrawals from his invested funds in June 2021. So, I don't find that it needs to do anything further.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 October 2023.

Daniel Little  
**Ombudsman**