

9 June 2021

Final report by the Complaints Commissioner**Complaint number FCA00888***The complaint*

1. On 2 February 2021 you complained to me about the FCA's investigation of your complaint. Both you and the FCA have had the opportunity to provide your comments to both of my preliminary reports which I have reviewed.

What the complaint is about

2. In its decision letter to you dated 19 January 2021 the FCA described your complaint as follows:

Part One

You claim you are having difficulty with the FCA not handling a serious matter in respect of solicitors Firm A who you believe are responsible for illegal loans and illegal money lending.

You believe Firm A is allowed to accept payment for brokering illegal money lending loans without the need to be authorised and this is accepted by the FCA and the firm is able to carry out FCA-regulated activities.

You believe solicitors can disguise themselves under FCA registration and sell any financial product they deem fit and solicitors regulated by the SRA are able to lend, broker, and act as unlicensed debt collectors.

You claim the FCA allow anyone to take kickbacks and facilitators fees from illegal loans.

Part Two

You claim you provided intelligence about Firm A in 2018 and the FCA failed to deal with it properly and investigate the firm when you raised a concern.

What the regulator decided

3. The FCA partially upheld Part one of your complaint and informed you that the intelligence about the activities of Firm A that you provided them with, was not referred to the relevant area, as the Supervision Hub believed it had dealt with the matter, by mistakenly assessing the nature of the transactions. The Complaints Team believed the intelligence should have been passed to the relevant area although it did not think the consideration of the intelligence provided by you in 2020 would have affected your situation.
4. The FCA explained that it does not allow illegal money lending and there is no evidence to demonstrate that the FCA has allowed any illegal behaviour. It also stated that the FCA does not allow firms regulated by it to arrange or participate in illegal loans. Any illegal matters would be for the police. The Complaints Team informed you that allegations of illegal actions by a solicitor would be better dealt with by the SRA.
5. The FCA stated that law firms can be on the FCA register and carry out FCA-regulated activities as long as they follow the rules to be an Exempt Professional Firm and there was no evidence the firm had applied the FCA rules incorrectly.
6. In 2018 you made an enquiry to the FCA regarding Firm A and the FCA found that its response to your enquiry was dealt with appropriately.

Why you are unhappy with the regulator's decision

7. In your correspondence with me you did not make me aware of any specific complaint points you wanted me to consider. You forwarded me a letter that you sent to the FCA Complaints Investigator after you received the FCA decision letter, amongst other correspondence and explained that your position was self-explanatory when referring to the attachments. You also stated in your email to me that, '...The FCA were not diligent in their findings even after being corrected...'

My analysis

8. Whilst reviewing your case and the case file provided to me, I can see that at times this situation has affected your mental health. I am sorry to hear this and the trouble and upset you have endured.
9. It also appears that you have liased with several regulatory and ombudsman organisations, many of which you say have provided you with messaging referring you back to the FCA.

Background to your complaint:

10. I have provided a background to your complaint by reviewing the FCA case file and information that you have provided to me.
11. My understanding of your complaint is that you were offered and received personal loans by your firm of solicitors Firm A, for personal expenses such as school fees and rent arrears. You have stated that Firm A posed as a financial lender, stood as guarantor, security for the loan as well as packager and facilitator. You mention the solicitor was a licenced lender who was in control of your family law matter. You responded to my preliminary report on this point and stated, '...The firm stated there was Court involvement in the loan arrange against the Financial order...' You also mentioned, '...The firm also created a further arrangement that was deemed as not permissible in family proceedings according to the presiding judge in my matter...' You state that there were also other parties involved that have acted as 'platform lenders' in your case and the agreements were created between the lenders and Firm A. You also mention that the loans were at an interest rate of 1.8% and your solicitor, Mr A took facilitation fees from these loans without your instruction.
12. You have mentioned that it was when '...alarm bells went off...' and when you were '...educated by the Court at the District Judge Level...' that you started your own investigation. You have also stated in correspondence with the FCA,

I reported this matter to the Solicitors Regulation Authority because Mr A made claims his law firm (Firm A) were guarantors for the Loan which was unbeknown to me. The Legal Ombudsman stepped in and both are conducting investigations

13. You allege that after receiving legal advice and contacting several organisations they said the loans were illegal. You have contacted the FCA several times and during your contact on 15 January 2019 I can see you state that,

Firm A is NOT FCA regulated and neither of his Litigation Funding Lenders...the money came from Solicitor A's personal bank account and not his Solicitors Regulated Account

14. I can also see you have raised concerns in a letter to the FCA Complaints Team where you have disagreed with aspects of the FCA decision letter. The main take away from this letter whilst cross referencing with the FCA case file, were your comments regarding Part 20 of the Financial Services and Markets Act 2020 (FSMA)

15. You mention that the SRA and the Legal Ombudsman are investigating Firm A and Mr A. You have also stated in your correspondence with the FCA more recently,

In December 2019, the Solicitors Regulation Authority decided to bring disciplinary proceedings against Mr A at the independent Solicitors Disciplinary Tribunal ("SDT"). The date is sometime in January 2021 for 6 days and the Loan is part of the case.

16. Matters which involve the conduct and potential breaches of solicitors such as Mr A's duties owed as a solicitor to clients, are matters best placed and more appropriate for the SRA. Since my preliminary report I have learnt that as a matter of public record, Mr A was prosecuted by the Solicitors Disciplinary Tribunal and fined £10,000. It appears this was published on the SRA website from 1 April 2021 and the judgement will be available on the solicitor's tribunal website in due course. Later in my report I go into further detail surrounding the FCA's response to my preliminary report and their approach to allowing the SRA to continue with its ongoing investigation.

17. I can see your first liaison with the FCA took place in October 2018 during a phone call. The FCA Associate you spoke with referred you to the Money Advice Service and suggested you take legal advice. You were also taken to the glossary term of Exempt Professional Firm. I am pleased to note that when the Complaints Team looked at your complaint, it identified that the Associate you

spoke with during this time, should have done more. I can see in the FCA decision letter that the Complaints Team has addressed this and confirmed that the intelligence you provided should have been referred to the relevant area. In my preliminary report I addressed that there were areas of your complaint which I felt could have gone better. Since receiving the FCA's response and explanation to my preliminary report I have reviewed my stance on this which is discussed later in my report.

18. You contacted the FCA again shortly after, on 15 January 2019 via an online reporting form highlighting Firm A as a suspected unauthorised firm and you attached your Metro Bank statements. In relation to the personal loans from Law Firm A, you stated that the bank statements showed the credits on your bank statements and you confirmed the money came from Mr A's personal bank account as opposed to the '...SRA regulated account...' You received an automated response from the FCA which acknowledged your contact.
19. Your next liaison with the FCA took place via telephone on 16 October 2020 with an Associate. I can see that there was some back and forth by email following this call. The FCA Associate initially asked for further information from you to try and assist you and provide guidance where possible, which was positive to see. It appears as communications progressed you also forwarded the Associate information you had received from another law firm, whom I shall refer to as Law Firm B. The Associate looked at the information you forwarded and responded to you.
20. I have analysed the communications that took place and it is not clear to me how the Associate reached their conclusions on your matter. In response to this point in my preliminary report you informed me that, '...the firm only sold 1 property for me and all conveyance fees were deducted from the sale...'. This is new information which has been brought to my attention. So, considering this I think it may be likely that the Associate reached their conclusions regarding the conveyancing point based on this information. I also think it was from this point on, you were not happy with what the FCA was doing with the information you gave it and felt the need to make a complaint.

21. I have looked at your case in chronological order to identify the steps the FCA took in relation to your concerns and your complaint, in determining my investigation.

Information you provided to the FCA:

22. I can see you provided the FCA with your Metro bank statements, two personal loan agreements and an SRA investigation document. Whilst I have not been provided with these documents or had sight of these, I can see from the FCA case file that these were indeed received by the FCA.

23. What does not resonate, is whether this information and evidence was provided to the relevant areas. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material.

24. I can see from the FCA case file that there was some liaison between the Complaints Team and several different departments and individuals at the FCA, in relation to your matter. It is reassuring that I have been able to see this liaison as it shows me there was some commitment to push your case forward as far as possible. As you are aware from your liaison with the FCA, an Associate did raise concerns when you contacted the FCA citing,

I am concerned that the individuals you borrowed money from aren't authorised by us to lend money, and so it may be that the loans you have are unregulated

25. I can see that liaison took place internally when the Complaints Team raised your case with other individuals in areas, such as Technical Specialists. I am aware that some of the information and evidence you haven't been able to provide such as the third loan agreement. In response to my preliminary report

you highlighted in relation to the loan agreement that Mr A refused to provide it. The FCA can only go by and investigate based on the evidence provided to them. Notably other areas of the FCA did ask for further details of your case. However, at the same time, I am unable to see that the information and evidence that was available which you provided, was passed to these areas. Information I am referring to include your Metro bank statements, loan agreements and the SRA investigation document all of which were received by the FCA, but again documents I have not had sight of and have not been provided in the FCA case file.

26. The Complaints Team confirmed in your decision letter that your information was passed to the relevant team. I can see when the Complaints Team reached out to the relevant areas, they gave a breakdown of your matter. However, I am unable to determine whether the information I have referred to previously was passed onto these areas, especially when the areas confirmed they needed more details and if they were able to get information to let them know. This does not mean or guarantee that there would have been a different outcome on your matter, but at the very least, I would expect to see that the evidence you passed onto the FCA was actually shared with the relevant departments. The FCA responded to this point in my preliminary report and provided, that it was decided to leave the SRA investigation and disciplinary proceedings to reach their conclusions. The FCA explained that they would not generally act against a firm where another regulatory body (in this case the SRA) is investigating the same matter. The FCA also stated if the SRA had not been acting, then as they are the regulatory body for this firm, the FCA approach would have been to influence them to investigate and act. I think this is reasonable and appropriate given there was already an existing investigation under review. For these reasons I can see why the information wasn't shared with the relevant departments and the FCA thought it not appropriate at that stage.

Part 20 of the Financial Services and Markets Act 2000 (FSMA):

27. One of the main aspects of this complaint is Part 20 of FSMA which can be accessed here <https://www.legislation.gov.uk/ukpga/2000/8/part/XX> You have raised issues with the FCA as to the legality of Firm A and whether, '...Firms that collect illegal loans are exempt or not...'

28. Looking at the FCA case file it appears there are differing views in the application of FSMA on your case. It appears there could be several reasons for this, including lack of evidence such as credit agreements and possibly evidence not being shared with the relevant teams.
29. [FSMA Section 327 Exemption from the general prohibition](#) is most relevant here when looking at designated professional members, carrying out exempt regulated activities. It provides as follows:
- (1) The general prohibition does not apply to the carrying on of a regulated activity by a person (“P”) if—
 - (a) the conditions set out in subsections (2) to (7) are satisfied;
30. Subsection (4) then provides as follows,
- (4) The manner of the provision by P of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.
31. Looking at the FCA case file and liaison in the relevant areas, it appears concerns pertaining to subsection (4) were raised generally when the Technical Specialist Team were given a brief overview of your matter. Whilst they could not give definitive advice based on the limited information made available to them, they did raise initial concerns. I have taken into consideration the response of the FCA on my preliminary report and the sharing of evidence internally and on specific sharing platforms. This is discussed later in my report, but on balance I have addressed why I understand the FCA’s reasons for not sharing evidence.
32. The Complaints Team discussed the element of your complaint concerning the activities of Mr A. They provided as follows,
- Your allegations about the firm are primarily about the loans made to you. All firms carrying on regulated consumer credit activities must: be authorised by the FCA with the appropriate permission: have been granted interim permission by the FCA: be exempt under the SRA's arrangements made under Part 20 of the Financial Services and Markets Act 2000 (FSMA) or: have ceased to carry on consumer credit activities.

Firm A of solicitors regulated by the SRA. On the FCA register it states their professional body is the SRA. Law firms need to consider whether they meet the criteria set out in Part 20 of FSMA (sections 327 and 332(4)) in order to be able to carry on regulated consumer credit activities. Under Part 20 of FSMA, the carrying on of FSMA-regulated activities by members of the SRA is exempt from the general prohibition. SRA regulated firms carrying on regulated activities under the Part 20 regime do not have to be authorised by the FCA. These firms are referred to as EPF's.

If firms can demonstrate that they fall within Part 20 in relation to consumer credit activities, then they are regarded as an exempt professional firm and must comply with the SRA's regulatory arrangements (Scope Rules and Conduct of Business Rules).

33. In my preliminary report I highlighted the differing views within the FCA as to Part 20 of FSMA, general concerns raised and the accuracy of its application. I also highlighted again evidence that needed to be shared with relevant departments, as I could not see this had taken place. The FCA responded to the points of sharing evidence with the relevant departments. The FCA also responded as to their reasons why the areas did not assess FSMA conditions due to the ongoing SRA investigation. Having reviewed the FCA's response and due to the ongoing SRA investigation, I think it was reasonable for the FCA at that particular stage to not require relevant departments to review the evidence. This is considering the appropriateness for the SRA to continue with their ongoing investigations.
34. The FCA amongst other external bodies collects and shares intelligence or information on individuals and firms via a shared intelligence service (SIS). I can see that the FCA confirmed internally during the investigation into your complaint, that the SRA was one of the bodies that accessed information from the shared intelligence service. However, it was not clear, nor had it been confirmed that your information was actually shared on this system. I would expect in such a scenario that it was appropriate for the FCA to share the information on this platform given that the SRA also had access to it. The FCA responded to this point and explained to my office the background and how the SIS mechanism works for various regulators and designated professional bodies and recognised investment exchanges to share material on individuals and firms.

Due to the confidentiality restrictions as to how this platform works specifically for the regulators and designated bodies in the industry, I am unable to share more information on this. The SIS tool and its existence has been brought to my attention recently because of your case and due to confidentiality, I am unable to say either way whether the information was shared on this system. I realise this may be frustrating, but it is better that I, as an independent body am able to see the information first-hand enabling me to highlight if I had any concerns.

SRA referral:

35. The FCA referred you to the SRA in some aspects of your complaint. I think it was right to do this considering the accusations against Mr A as a solicitor and the alleged conduct. This is indeed a matter for the SRA when a solicitor's duties come into question and it appears likely the SRA may look at the SRA Financial Services (Scope) Rules in their investigation. The SRA Financial Services (Scope) Rules can be accessed here <https://www.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/>
36. Overall, I can see some effort was made by the FCA to investigate your concerns to help you. I explained in my preliminary report that the FCA could have improved the sharing of your evidence internally and that I was not aware whether your intelligence had been shared using the shared intelligence service. Looking at the FCA's response to these points particularly in paragraphs 26, 34 and 35 of my report I am now satisfied for the reasons set out by the FCA that they took appropriate action in your case.
37. For the reasons stated above in paragraph 37 and the FCA's response to my preliminary report, due to the realisation of the SRA investigations and how the SIS platform works, I accept the reasoning behind why the FCA did not provide a clearer application of FSMA due to the ongoing SRA investigation. It is not unusual for Regulators to take this stance, once they are made aware of existing, ongoing investigations by other Regulators
38. In my preliminary report I upheld your complaint. However, since receiving the FCA's response and new information to my report I accept their reasoning and explanations regarding the sharing of intelligence via the SIS platform and internally.

My decision

39. I am sorry to disappoint you with my decision, but for the reasons outlined above, I am satisfied with the FCA's actions regarding the information and intelligence you passed on to them. I agree that it was more appropriate to allow the SRA to continue with their ongoing investigations.

Amerdeep Somal

Complaints Commissioner

9 June 2021